Fish, et al. vs. GreatBanc Trust Company

Videotaped Deposition of

ROBERT REILLY

August 28, 2015

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

BONNIE FISH, CHRISTOPHER MINO,)
MONICA LEE WOOSLEY, LYNDA D.)
HARDMAN, EVOLVE BANK & TRUST,)
an Arkansas bank and trust)
company,)
Plaintiffs,) Case No.
vs.) 1:09-cv-01668
GREATBANC TRUST COMPANY, an)
Illinois corporation; MORGAN)
FAMILY FOUNDATION, LEE MORGAN,)
ASHA MORGAN MORAN, and CHANDRA)
ATTIKEN,)
Defendants.)

VIDEOTAPED DEPOSITION OF ROBERT F. REILLY
Chicago, Illinois
August 28, 2015

Reported By:
Donna M. Kazaitis
CSR, RPR, CLR, CRR
IL-CSR No. 084-003145
Job No.: 10018085

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Video-recorded deposition of ROBERT F. REILLY, taken at Willamette Management Associates, 8600 West Bryn Mawr Avenue, Chicago, Illinois, before Donna M. Kazaitis, IL-CSR, RPR, CLR, and CRR, commencing at the hour of 9:00 a.m. on Friday, August 28, 2015.

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Jesse A. Ultz
Gary D. Greenwald (Telephonically)
James Porter (Legal Videographer)

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THE VIDEOGRAPHER: The time on the record is 9:00 o'clock a.m. Today's date is August 28, 2015. My name is James Porter of Aptus Court Reporting. The court reporter today is Donna Kazaitis of Aptus Court Reporting located at 600 West Broadway, Suite 300, in San Diego, California.

This begins the video-recorded deposition of Robert Reilly testifying in the matter of Fish, et al., versus GreatBanc Trust Company, et al., Case Number 09-cv-1688, taken at 8600 West Bryn Mawr Avenue in Chicago, Illinois.

The video and audio recordings will take place at all times during this deposition unless all counsel agree to go off the record. The beginning and end of each video recording will be announced.

Will counsel please identify yourselves and state whom you represent.

MR. SCHEIER: My name is Mike Scheier. I represent the defendants Lee Morgan, Asha Moran, Chandra Attiken, and the Morgan Family Foundation.

MR. GOTTO: Gary Gotto, Keller

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Rohrback, for the plaintiffs and the witness.

THE VIDEOGRAPHER: Please swear in the witness.

(Witness sworn.)

ROBERT F. REILLY,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SCHEIER:

Q. What's your name?

A. Robert Reilly.

Q. Mr. Reilly, you heard me introduce myself just a moment ago. My name is Mike Scheier and I represent several of the defendants in this case, Lee Morgan, Asha Moran, Chandra Attiken, and the Morgan Family Foundation.

As we proceed today, may I call you "Robert"?

A. Yes, surely.

Q. And if you need to address me for clarification or for any other reason, please feel free to call me "Mike."

A. Thank you.

MR. SCHEIER: Gary, before we

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start, I did want to say that we're going to take Robert's testimony subject to the motion we have pending before the court in regard to his July report and the other reports.

MR. GOTTO: I understand.

BY MR. SCHEIER:

Q. You're currently employed with Willamette Management Associates; is that correct?

A. That's correct.

Q. And your title is managing director I understand?

A. Yes.

Q. I had seen the CV you included with your report, and I just wanted to confirm that everything that was in it as of the date you provided the report was accurate with regard to professional and educational background.

A. I believe it is.

Q. Are you familiar with a firm known as Duff & Phelps?

A. Yes, I am.

Q. Are they a competitor with Willamette Management?

A. I would say for many of the services

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we provide, yes, they are.

Q. Have you worked with an individual that at one time was a member of Duff & Phelps, Lee Bloom?

A. Yes.

Q. Were you able through your interactions with Mr. Bloom to form an opinion about his competency?

A. I would say so.

Q. And what is that opinion?

A. I've worked on transactions both on the same side and on the other side as Lee many times over the years and I've always found him to be competent.

Q. And have you had any opportunity to work with him on engagements where Mr. Bloom or Duff was called upon to value the stock of an ESOP company?

A. Yes.

Q. Have you ever heard of Craig Jackson who is with Houlihan Lokey?

A. Yes, I have.

Q. Have you worked with Craig before?

A. I have, and I'm trying to think of when, but yes, I have, and our firm has.

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Q. With enough frequency to form an opinion as to Craig's competency and professionalism, in particular with regard to valuations of ESOP companies?

A. I would say so, in that with regard to both Lee and Craig, while we work with and against Houlihan, work with and against Duff, for those individuals it's always been ESOP related transactions and I've always found Craig to be competent.

Q. I understand that in your position with Willamette Management, as you're doing today, you often give expert testimony in litigation.

A. Yes, sir.

Q. Does your work, at least in the last two or three years, include nonlitigation engagements?

A. Yes. The overwhelming majority of my work is nonlitigation.

Q. And what percentage of your work would you say in the last let's say three years, and just a ballpark, would be related to nonlitigation or transactional matters?

A. I would say between 80 and 90 percent.

Q. Do you keep time records when you are serving as an expert witness in litigation?

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A. Yes.

Q. Have you retained time records over the last two or three years for the engagements you've worked on as expert witness in litigation?

A. Yes, I have.

Q. I don't mean to pry unnecessarily into Willamette's business and I'll only have a question, maybe two, and so I apologize in advance, I hope I don't make it uncomfortable. And if you need to make this part of the transcript "Confidential," please let me know. I don't want to discomfort you in any way.

But are you able to tell me as a percentage of Willamette's revenues in the last year how much of it was derived from your litigation related services?

A. Just mine --

Q. Yes, sir.

A. -- or the firm's?

Q. Initially just yours.

A. Oh, I would say that's a really small part. On average per year maybe five percent of the firm's revenue are my litigation cases. And I'd say 10, again 10 to 20 percent, depending on

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the year, sometimes we have a particularly big case, of the firm's revenue are litigation related cases. But I'm going to be a relatively small portion of our forensic practice, and our forensic practice by design is always a very small portion of our overall practice.

Q. And, Robert, when you say "forensic practice," is that just a synonym for the litigation related work that you do?

A. That's right. CPAs decided some years ago that we get higher billing rates if we call ourselves forensic analysts than litigation support experts.

Q. And I suspect that you then call yourself that so you can get those higher rates?

A. Ever since then I've been a forensic analyst.

Q. Okay. I understand. Thank you very much.

With respect to in general Willamette's revenues generated from litigation assignments, can you, again just a ballpark, give me a dollar figure let's say in the last year, if you can?

A. Sure. So I would say year to date, in

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our fiscal year -- well, I probably estimate the last 12 months, approximately our revenue is going to be $18 million let's say in professional fees and 2 to 2 and a half million dollars of that will be litigation related cases.

The overwhelming majority, the majority of the revenue will be transaction related, a good portion of the other revenue will be taxation related engagements, and then there will be some financial accounting and corporate planning and those types of engagements.

Q. Which of those nonrevenue type engagements do you principally work on?

A. Well, I try to work on all of the firm's engagements. So at any point in time or throughout the year my next engagement could be a transfer pricing engagement not related to litigation, it could be a gift and estate tax planning engagement, it could be an ESOP related transaction, it could be a nonESOP related transaction where we're offering a fairness opinion or a solvency opinion. It could be a purchase price allocation for fair value accounting purposes.

So we perform valuation related

services for I often say for a couple of handfuls of different reasons, only one is litigation. So I would say on average maybe one out of 10 cases I work on is litigation related, and for the firm it may be one out of 20 cases that we work on.

Q. You mentioned nonlitigation ESOP valuation services, Robert. What percentage of your professional time is spent on nonlitigation transactional related work on ESOP transactions?

A. I would say -- it varies by year because, you know, we could have a number and then we could have one.

Q. That's a good point. Let's say ballpark the last five years.

A. Sure. I would say, this is typical, right now I'm working on two ESOP transactions for our clients, and that would be pretty typical. On average I probably have about two different cases that are either the purchase or sale of one of our ESOP clients.

So sometimes more, sometimes less. So for my practice I would say that could be, again, 10 to 20 percent of my time. For the firm overall, it's probably about that, about 10 to 20 percent of the collective time.

Q. And what you were just discussing, the 10 to 20 percent of yours and the firm's collective time on ESOP related transactions, are those typically valuation engagements?

A. Indirectly. I mean the typical work product is a fairness opinion. So right now we have one case, one client, who we have performed annual valuations for for many years who has received an unsolicited tender offer, so we're evaluating that. We'll ultimately be asked to either issue or not issue a fairness opinion. And obviously a valuation is one step of that.

We have another client, a large grocery store, grocery store chain, that is thinking about going from a minority ESOP to a 100 percent owned ESOP. So, again, ultimately our work product will be a fairness opinion, but obviously a valuation would be a component of that.

Q. In the 100 percent ESOP transaction you just mentioned, who are you representing? Who is your client in that particular matter?

A. The ESOP trustee, the current ESOP trustee.

Q. Are you familiar with the party plan

method of direct selling?

A. Pretty much. I've worked on engagements over the years for Mary Kay, for Avon, for a couple of other direct selling companies. So I've seen that before.

Q. When did you work on a Mary Kay engagement?

A. That was, I'm pretty sure it was more than five years ago, but it was certainly less than 10. It was an employee dispute. There was an employee that owned a block of stock who had been terminated and then the question was what was the value of that stock that was being purchased back by the Mary Kay Company.

Q. Other than that -- I think you did mention one other company that --

A. Well, I was thinking of Avon --

Q. Okay.

A. -- just because those are recognizable names. We've worked for a lot of smaller companies, but those are names that people think of when they think of direct selling, having a party in your house and demonstrating products.

Q. And when you refer now to the party and selling products in the home, do you

understand that to be the party plan method of direct selling?

A. Yes.

Q. What did you do for Avon?

A. Avon was a while ago. It's got to be, I want to say at least 10 years ago, maybe about 10 years ago. That was -- that wasn't a litigation related, it was a transaction. And I just don't recall if they were -- it was a foreign transaction. They were either buying or selling an international subsidiary because I remember we had to travel for that. But it was a transaction where we had to give an opinion. So it wasn't a, it was not a litigation case.

Q. What type of opinion were you asked to give in that case, or in that transaction I should say?

A. It would be a fairness opinion that they wanted some independent confirmation that the transaction price was fair.

Q. They were the buyer?

A. I believe in that case I want to say they were the seller, and the concern was the board, or the legal -- the special counsel to the special committee of the board's concern was they

didn't want any stockholder to allege afterwards that they had sold off their subsidiary at less than a fair market value price.

Q. Was the subsidiary in a business that marketed its products through a party plan?

A. Yes. It had been a business that they had. It was their Avon business that they just decided to spin off. They didn't want to continue operating in that country.

Q. Did they directly market the product to the end consumer using independent contractor consultants in the overseas, I'm talking about solely the overseas subsidiary that was subject to the transaction?

A. Yes, exactly.

Q. And did you come to learn in this case that the Creative Memories division of Antioch was also a party plan, that also used the party plan method of selling to market its products to the end user?

A. Yes, I agree with that. And they have, for the most part, independent contractors as opposed to employed salespeople.

Q. Other than the Avon engagement and the Mary Kay engagement, can you identify any other

clients of Willamette over the last five to 10 years let's say who marketed their products to the end user through a party plan method of sales?

A. I can't think of any. I could look that up. I just can't think of any. I mentioned those just because those are household name type companies.

I'm pretty sure we performed work for other similar companies. I just can't think of any other names right now.

Q. Can you think of the type of work you performed for them?

A. Well, you know, it would be pretty typical. Our cases are either transaction, so they're fairness opinions. It's some type of litigation, so some type of damages analysis. Very often we're performing a purchase price allocation. That's a common assignment for us. It could be the valuation of a division or subsidiary that's either being purchased or sold.

Q. You just don't remember one way or the other on these smaller engagements that you're kind of trying to dredge your memory now to see if you can recall.

A. Right, exactly.

Q. Okay. On the Mary Kay, I'm sorry, can you tell me whether that was a fairness opinion engagement -- oh, no, I'm sorry. That was the employee who was having, there was an employee dispute and you were called in to do a stock valuation.

A. That's right. It never went -- it was threatened litigation. I don't think it even went to deposition. It certainly never went to trial. But we were asked by the company to value this block of stock.

It was one of these cases, which I guess lawyers probably see more often than we do, where an executive had a block of stock and when she -- it was a she -- she left, it was going to be purchased back at some term like fair value or fair market value, some unidentified term in the contract.

The employee leaves. Of course she thinks the stock is worth $100 million. The company thinks it's worth $10 million. Both sides hire valuation analysts and we both issued reports, and after a while the case settled.

Q. Yes. Did the fairness opinion or stock valuation rather that you were called upon

to do in that case require you to look at the company's historical and projected sales in conjunction with determining the value of the stock?

A. Yes.

Q. Both Mary Kay and Avon are private companies as opposed to companies whose stock is sold in public markets?

A. At the time, I think they still are, at the time Avon was public. And Mary Kay was and is private.

Q. Have you ever been engaged by a company in a market similar to Creative Memories, meaning scrapbooking services?

A. I don't believe so.

Q. How about engagements with direct selling organizations who are in whole or in part owned by an ESOP?

A. I may have. I can't think of any right now.

Q. In either your Avon or Mary Kay engagement or any of the smaller engagements that you can't recall specifically right now, were you ever called upon to analyze direct selling organization specific KOIs?

A. Well, not really to analyze that separately. I mean typically every company that we work for has their own set of what they would consider key indicators. We're provided with that and we perform due diligence of that and we compare those key indicators for that company, for that industry, to other companies in the industry, to industry averages, to that company historically and to that company's projections of their key indicators.
So we often look at key indicators. We're not asked to really opine on the key indicators. What we're asked to do is opine on value. But typically if there's an indicator of some operational or financial metric that's important to the company, it's probably important to the valuation.
Q. Do you recall ever analyzing KOI in either of your direct selling organization assignments that related to consultant or independent contractor productivity?
A. Well, I would say yes, but not only in that context. I mean when you think about it, sales per salesperson, whether they're independent contractors or employee salespeople, is just a

really common metric. In just about, I won't say every case, but in every case that's a marketing type organization. And including professional services firm like yours or mine, we're going to analyze some measure, some metric, of sales or revenue per salesperson.
Q. And you had understood that to be the productivity metric that Creative Memories had tracked for several years while it was operating as a direct selling organization?
A. Yes.
Q. And you, in fact, looked at that metric as part of the report that you delivered in this case; correct?
A. Yes, I did.
Q. In your prior engagements with Mary Kay, Avon, or some of the smaller engagements that you mentioned that you don't specifically recall, had you been given an opportunity to analyze consultant activity rates, as you understand that term?
A. Yes. And, again, it's not just related to party plan direct selling companies --
Q. I do get that. I'm asking though about in your party planning engagements.

A. Sure.
Q. So I apologize for cutting you off. I just wanted to be sure that you understand the scope of the question.
A. I would say yes in those cases, and, again, in almost every engagement where it's really a marketing oriented company we're going to look at, particularly if they're outside contractors versus employees, what percentage of contractors of the salesforce sold this month versus didn't sell this month, what number of units they sold, what amount of gross and net sales they sold. So those are really common metrics.
Q. Did you need to look at consultant activity rates in your Mary Kay engagement in determining the value of the stock that the employee was tendering to the company upon his or her resignation, just to the best of your recollection?
A. We had that data. When you say did we look at it, I'm sure we looked at it because we had that information.
Q. Well, I'm asking if you analyzed it as part of your valuation of the stock that was at

issue in that particular engagement.
A. My -- and, again, this goes back a number of years.
Q. More than 10 years?
A. No, but more than five, I would say five to 10.
Q. Okay.
A. I would say that's one of the factors we considered, but we considered it within the context of, and I'm saying I considered it, within the context of a due diligence on the financial projections that we received.
Q. I'm not sure I follow.
Did you use it, for example, we're now talking about consultant productivity, as a metric to value the shares at issue in the Mary Kay dispute?
A. Not directly.
Q. Did you use it to value the shares in coming up with your fairness opinion in regard to the Avon foreign subsidiary spinoff?
A. Not directly.
Again, what I'm using it for is to assess the reasonableness of a set of financial projections that management provided to us.

Q. What about consultant attrition, do you recognize that as a KOI in a direct selling organization?

A. For most companies, yes.

Q. Okay. In your experience looking at -- KOI is from direct selling organizations, again, you referenced Mary Kay and Avon. Did you ever recognize a relationship between national or regional unemployment rates and increases or decreases in the number of consultants or independent contractors that throw parties for purposes of selling a product directly to the end consumer?

A. Well, there is a relationship.

Q. What is that relationship?

A. It's an inverse relationship. But we -- maybe I'm jumping ahead to your next question. We didn't use it directly as a valuation metric. But there is an inverse relationship as unemployment rates increase, then people switch from being employees because they are unemployed to becoming consultants and selling products as, you know, through all types of home demonstration and similar party plans.

Q. Did you in preparing your report in

this case analyze Antioch's or Creative Memories' consultant count as it was increasing or decreasing relative to regional or national unemployment rates?

A. Not specifically.

Q. Is that a no, you did not or you did?

A. I guess I would say no. I just don't remember looking at that specifically.

Q. Have you or folks at your direction at Willamette ever run a discounted cash flow analysis with regard to a company that sells its products through a direct selling or party plan method?

A. Yes. That would probably be the most common valuation method we would use.

Q. And what engagements did you run a DCF other than this litigation related engagement for a party plan direct selling organization, which I guess would be either Avon or Mary Kay?

A. Well, certainly for those and any other cases that I've worked on, it would certainly be more likely than not, it would be the exception not to perform an income approach and it would be the exception within the income approach not to perform a discounted cash flow valuation

method.

Q. In the several publications that I saw in your CV, I didn't think I saw one that related to direct selling organizations or party plan. Did I miss something or; is that right?

A. I think that's correct. I don't recall ever writing anything specifically about that.

Q. Just moving topics, Robert. Do you recall serving as an expert witness in litigation several years ago where you were adverse to Gary Greenwald?

A. Well, I would say I wasn't adverse to Gary Greenwald. He was the opposing counsel --

Q. Okay, fair enough.

A. -- on a case, on an ESOP related case, for the Tharaldson Motels, Inc. ESOP.

Q. Do you recall seeing papers submitted in the case where Mr. Greenwald argued that your opinions are based upon reasoning and methodology which lacked the necessary intellectual rigor, testing, peer-reviewed publication, and general acceptance in the ESOP valuation community?

A. I don't recall seeing those. But I would put that description you just gave me in

every sentence that starts with opposing counsel. So that's the job of opposing counsel, to make those assertions.

Q. So is it your experience that in all cases where you served as an expert witness, opposing counsel submits briefs that say your methodologies were not reliable?

A. I think it's pretty common in the cases I work on and the cases I've seen that we as Willamette don't work on that counsel on both sides make Daubert challenges for the experts on the other side.

I mean in the last certainly five or 10 years, that's been more common than not in my experience.

Q. Do you know how the court ultimately ruled on Mr. Greenwald's motion to exclude your opinions in that case?

A. No, I don't specifically. I know I did testify, so I assume the court didn't reject -- well, I know the court didn't reject me because they allowed me to testify. So I don't know exactly what the legal exchange was.

Q. In your experience have you ever had a court exclude your opinion or your testimony from

trial?
A. Not that I'm aware of, no.
Q. Have you ever based on your recollection been in a case where a federal or state court did not qualify you as an expert witness?
A. No. I don't believe so.
Q. Before this case had you ever worked for or against a party represented by Jim Dyer?
A. I don't believe so.
Q. In this particular engagement with regard to Creative Memories and the Antioch Company, was your principal attorney contact Mr. Greenwald?
A. I'd agree with the phrase "principal contact," but my recollection was, and we've worked on this case, as you know, for six years, almost every call that Greenwald was on Dyer was also on. So I got the impression they worked as a team.
Q. Prior to this case, had you ever worked with Richard Weinstock before?
A. No.
Q. And prior to this particular engagement, had you ever worked with Mr. Buchanan

before?
A. No. I worked with Weinstock's firm. I mean not worked with. We received over the years a lot of ESOP repurchase obligation studies from Weinstock's firm. But I had never worked with him directly until this case.
Q. And who did you work with at his firm?
A. Ted Israel.
Q. Ted Israel?
A. Yes. I think that's his name. I mean that's my recollection.
Q. Did you come to understand that Mr. Israel has an expertise in analyzing ESOP companies repurchase obligations?
A. I guess I would say that was my understanding. We've received their reports in the normal course of valuing employer corporation stock. Not always, but typically we're going to ask for a repurchase obligation study and we receive it from a lot of different actuarial providers but often from Weinstock's firm.
Q. So in those cases Weinstock and that firm were not doing repurchase obligation studies for the sponsor company or the trustee, they were doing it at your direction?

A. Well, certainly not at our direction. What we would do is we would ask the, either the trustee or the sponsor company for a repurchase obligation study, if there was not one that was performed internally or if there was not one that was performed externally for a couple of years and it was a mature ESOP. I mean if it's a brand new ESOP, it may or may not be as important. But if it's a mature ESOP, we'd ask for a repurchase obligation study, and then it's up to the company to decide who they hire and we just look at the report and bake that into our valuation.
Q. I see. So when you would receive repurchase obligation studies over the many years of your engagements, occasionally a company or a trustee would engage Ted Israel and you would then receive the report through that means?
A. That's correct.
Q. My understanding, Robert, is that you're engaged to give opinions on behalf of the plaintiffs in this case. Is that your understanding?
A. I believe that's correct, yes.
Q. All right. And I also have come to understand that you, in fact, have formulated

several opinions that you, on behalf of plaintiffs in this case?
A. Yes, sir.
Q. I've also received from Mr. Gotto and his colleagues two reports from you, one in April and one in July. I presume you prepared those two reports?
A. Yes, I did.
Q. Are all of the opinions you intend to give in this case contained in those two reports?
A. As of now, unless something new comes up after today. But I mean those really are my opinions.
Q. And when you say "unless something new comes up after today," what do you have in mind?
A. Well, unless there's a new expert report that your side produces that I'm asked to respond to. But after today I'm not planning to do any additional work or conclude any additional opinions. As far as I'm concerned, I'm finished now.
Q. Okay. And the only exception you leave yourself would be if counsel asked you to do further work for one reason or another?
A. Yes, I mean exactly right.

Now, it may be counsel asks me directly or indirectly. I mean if you ask me what would happen if one of your analyses changed from X to Y and I say well, it's going to take me a couple days and counsel says let's perform that analyses in response to your request, I'm certainly willing to do that. But I'm not planning on doing any more work until somebody asks me to do more work.

(Deposition Exhibit 821 was marked for identification.)

BY MR. SCHEIER:

Q. Robert, Donna has been kind enough to hand you Exhibit 821. And if you would just please confirm after flipping through the few pages -- and they're double sided you'll notice -- that this is, in fact, the engagement letter between Willamette Management Associates and in this case it appears to be signed by Mr. Greenwald as plaintiffs' counsel? (Document tendered to the witness.)

A. Yes, it is. We had sent the engagement letter to Mr. Dyer, but ultimately it came back signed by Mr. Greenwald.

Q. I was going to ask you about that, but

I appreciate that clarification, so I don't need to ask you about it.

Now, I don't have very many questions on this exhibit at all. The questions I do though have relate to some remarks on Page 2 of Exhibit 821.

A. Yes.

Q. Specifically, Robert, if you'd please turn your attention to the paragraphs under "Purpose and Objectives of the Analysis" --

A. Yes.

Q. -- at the top. There are three numbered paragraphs that follow that bold point heading. The first one says that the objectives of our analysis are threefold, the first being to estimate fair market value of the Antioch common stock just prior to the December 16, 2003 stock purchase transaction.

Did I read that correctly?

A. Yes.

Q. And, in fact, in general, and we'll talk about it more a little bit later, you undertook such an analysis; correct?

A. Yes. And it really was -- effectively, I think the three objectives were

reversed. I really performed the before and after valuations within the context of reviewing the Duff & Phelps report, but ultimately I think I performed all three objectives.

Q. Yeah, I didn't ask you that, but I appreciate that clarification. I was just wondering if you had performed the first objective.

The reason I asked, Robert, is I was unclear what you meant by "fair market value." Can you please explain that to the court?

A. Sure. It's the typic ESOP ERISA IRS definition, willing buyer, willing seller.

Q. I had seen some references to something called the fair value standard. Are you familiar with that?

A. Yes, yes.

Q. How does that differ from the fair market value standard?

A. Well, there are actually -- that's easier asked than answered because there are two different fair value standards. Well, there are two different categories of fair value standards.

The fair value is the standard of value that analysts use for GAAP compliance

purposes. So it's defined by ASC accounting standards codification 820 and has a number of provisions in it that make it different in some cases, not always, but often different than fair market value. So there is the accounting fair value.

Then there is the statutory fair value that would apply in dissenting shareholder appraisal rights cases and shareholder oppression claims cases under state statutes. Those definitions are generally consistent state by state but often have some inconsistencies between states. So you really have to look at the statutes of that state to see what the definition of "fair value" is for that specific legal purpose.

Q. Well, in general with regard to fair value, what methodologies would you use, again, a very general sense, in valuing stock using a fair value standard that differ from valuing a stock under a fair market value standard?

A. Sure. And I would say for all fair values on one hand fair market value on the other, the approaches and methods are going to be the same. You're going to have an income approach, a

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market approach, and an asset based approach, you're going to have two or three methods under each of those approaches.

So the approaches and methods will be the same. It's not until you get down to the third category of things you do which are called procedures. The procedures will be different and they'll be different depending upon which fair value standard would be applicable to the assignment.

Q. Well, let's talk then initially about the accounting fair value standard.

What procedures would be different in the general analysis in valuing a stock under a fair value standard as opposed to valuing the stock under a fair market value standard?

A. Sure. Effectively the definition of fair market value is a hypothetical willing buyer and a hypothetical willing seller both who are unidentified. So that's a market value. In fact, that's why the term "market" is in the definition.

The one word that's not in the term fair value is "market." So we're really not looking for a market value because under fair value it's the price that the current owner would

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pay to a seller. So now we have one of the parties identified.

So we're looking at what's called, under GAAP, an exit price, what would the current owner pay, or accept, and what would the next owner pay to the current owner.

So the individual valuation variables are going to be more specific to the current owner in a fair value case than they would be in a fair market value case.

In a fair market value case, I'm going to look at market derived discount rates, capitalization rates, tax rates, and any other specific valuation variable you can think of.

In a fair value for GAAP compliance purposes, I'm going to look at the discount rates, capitalization rates, tax rates, et cetera, of the current company.

Q. And you're not doing that in a fair market value analysis.

A. That's correct.

Q. Okay.

A. You know, I can go through different examples, but basically it's the difference between an unidentified willing buyer and willing

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seller and in a case where you know who the seller is, it's the current company, and then you simply have to come up with a category or a class of typical willing buyers.

Q. And would that put Antioch in that sort of category where you knew the seller, in this case it would be the sponsor company, and you would know a category of buyers, in that case the employees, the ESOP participants, where you could run a fair value analysis, for example, as opposed to a fair market value analysis on the Antioch stock?

A. That's correct.

Q. Okay.

A. You could do that.

Q. Okay, great.

What, Robert, would you have done differently in your report in valuing Antioch's stock prior to the transaction in a fair value analysis as opposed to what I understand you did which was a fair market value analysis?

A. I don't know specifically. I mean I just haven't thought about that.

Q. Okay. Is it fair to say then that you don't know one way or the other whether a fair

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value analysis of Antioch's shares would have yielded a different value conclusion than you reached using the fair market value analysis?

A. I can't tell you in this case it would. I can tell you typically it does.

We are often asked to perform, for ESOP sponsored companies, fair market value valuations and fair value valuations of the same company on the same date.

And the reason for that is, as you know, the DOL and the IRS require fair market value valuations. Audited financial statements and most plans have audited financial statements audited in compliance with GAAS, and they have to be presented in compliance with GAAP. The plan has to represent or present the sponsor company value at fair value for GAAP compliance purposes.

So not every client but some clients will ask for both a fair value and a fair market value. Sometimes fair value is higher, sometimes it's lower. It's often different.

Q. And is it sometimes equal to fair market value?

A. It could be.

Q. Okay. Thank you.

What would you have done differently in valuing Antioch's shares at fair value than you did at valuing Antioch's shares at fair market value, to the extent you know?

A. I don't know. I mean I really just haven't thought about that at all. In this case I really started with the Duff & Phelps fair market value valuation and looked at what would I do differently to adjust their fair market value valuation.

So there was never, that I saw, a fair value valuation on the table for me to adjust. So I just never gave it any thought at all.

Q. Let's move to the meat of the matter, and that is initially your April 2015 report. I have bound a copy for you. I hope that makes it easy for you to look through. That was my intent.

A. Okay.

Q. You don't mind using the copy I'm going to present you now?

A. No, whatever you want.

Q. Okay, great. So I'm going to mark it by putting the --

MR. SCHEIER: I guess, Gary, should

I put the exhibit number on the front of the binder or the front of the report. I didn't think about that before I bound it.

MR. GOTTO: Well, I guess we put it -- how would the court reporter deal with it?

MR. SCHEIER: What do you think?

THE REPORTER: I would say on the front.

MR. SCHEIER: Okay, done.

(Deposition Exhibit 822 was marked for identification.)

BY MR. SCHEIER:

Q. I'm handing you what's been marked as Exhibit 822. And just initially if you would identify that for the record as the report you tendered in this case dated April 20, 2015?

(Document tendered to the witness.)

A. Yes. This is my April expert report.

Q. Thank you. Did you draft the entire report?

A. Yes, I did.

Q. Did anyone at Willamette assist you in drafting portions of the report?

A. I would say in terms of typing, the

manager who worked on the case with me, Kevin Zanni, typed parts of this and prepared the exhibits for me. I am a terribly slow one-finger typist but I do my best.

So there are sections that Kevin and I sat down and discussed almost verbatim and then I asked him to actually sit down and type just because he's so much faster than I am. But in terms of the actual language, I developed all of the language. Of course, I take responsibility for every word and every number in the report.

Q. Okay. Thank you. That's helpful.

You also mentioned that Kevin Zanni prepared the exhibits. Can you describe that process a little bit, please, Robert?

A. Sure. In each case -- and it's the exhibits that start on Page 66 and I think it's Exhibits 1 through 22. In each case I told Kevin exactly what I wanted on each exhibit and he prepared a draft for me and I reviewed it, and any single number at all that I wanted to change I would have changed it. But, again, since the exhibits are primarily, if not exclusively, in Excel, and he's just a faster typist than I am, it was easier for him to prepare the exhibits than it

was for me.

But, again, I take full responsibility for deciding what goes on the exhibit and what the analysis does and certainly what the conclusion is.

Q. I take it from your answer though, I need to ask it, that none of the attorneys who engaged you drafted any portion of the report?

A. No. They did not.

Q. Did any of the attorneys who engaged you edit any portion of the report?

A. I wouldn't say "edit" in that they made any changes. There may have been one or two others. I can only think of one suggestion that they made to add an additional description here or there, and I wasn't opposed to that so I added an additional description here or there.

Q. And was that basically issues of a factual nature?

A. It was supplemental support I guess where they -- in fact, I have to recall now whether it was the original report or the rebuttal report, but there was a suggestion from Mr. Greenwald that --

MR. GOTTO: I'm going to interrupt

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you here. I just want to be sure we're confining ourselves to the Rule 26(b) for categories of properly discoverable communications.

I'll admonish the witness that it's limited to communications with respect to your compensation, with respect to any factual information provided to you by counsel, or with respect to any assumptions provided to you by counsel.

If that's fair, I think that's a fair characterization of the rule.

MR. SCHEIER: I think, Gary, my only issue would be if Mr. Reilly's testimony is going to be that Mr. Greenwald directed him to actually draft a portion of the report in a certain way, I believe I'm entitled to explore that.

MR. GOTTO: Well, I would say that my understanding is it's within the confines of the rule. If it was a direction through providing factual matters or providing assumptions, surely. And maybe it's theoretical -- if you can answer the question subject to that admonishment --

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MR. SCHEIER: I hear your instruction.

MR. GOTTO: -- let's see where it goes from there.

MR. SCHEIER: Fair enough.

THE WITNESS: Maybe this might. It wasn't to draft the narrative. It was a request could you add a couple more citations here, and I said yes, give me a couple of days and I'll add a couple more citations.

BY MR. SCHEIER:

Q. Did Mr. Weinstock or Mr. Buchanan receive drafts of your report before it was delivered to the defendants --

A. I don't believe --

Q. -- to the best of your knowledge?

A. I don't believe so. I know I didn't send them drafts. So unless legal counsel did, I did not.

Q. To the best of your recollection, you didn't ask them to review portions of your report where you relied on either Mr. Weinstock's or Mr. Buchanan's analyses?

A. That's correct.

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Q. Did you review their reports or drafts of their reports in conjunction with your reliance on their studies for purposes of your report?

A. I wouldn't say that I reviewed drafts of their reports. I did receive in both cases the exhibits ahead of the narrative report just so I had an extra couple of days to start baking their numbers into my numbers.

But I wasn't asked to review, comment, critique. I was just told these are the exhibits that will go into the report for FTI or for Weinstock and you'll get the full narrative report a week from now.

Q. And did you receive the full narrative report of Weinstock and Buchanan prior to finalizing your draft report?

A. Yes, I.

Q. Did your review of their narrative reports cause you to change any aspect of your report that's Exhibit 822, the April 2015 report?

A. No. I don't believe so.

Q. Robert, if you'd be so kind, can you please, I see your binder is untabbed, but I'm going to ask you to turn to your Appendix I. Which maybe it'll make it easier, it's the very

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last appendix. So it's probably just the last few pages.

I probably should have tabbed it for you. I apologize about that. Are you there?

A. I'm there.

Q. Great. If you could take a moment and flip through the few pages, the question is going to be whether it's a complete list of the material that you relied on in undertaking the analysis in your report and in forming the opinions that are contained in the report.

A. I would say it is. The only thing -- and I've reviewed the report a few days ago in preparation for the deposition. The only thing that I saw that was missing here that isn't in my final workpaper file, in the final workpaper file there are three depositions that I did rely upon. Here I think I only mentioned two. I don't think I mentioned the Attiken deposition.

Q. Chandra Attiken's deposition?

A. Yes. But that is in my final workpaper file as a document that I relied upon. I didn't specifically quote it in my report, so that may be why I inadvertently left it off this list.

But this list really was intended to represent the -- of all the documents I looked at, this was the subset of documents that I selected as documents I'm going to rely upon and that set of documents included three depositions, I think I only mentioned the Hoskins deposition and the Marchetti deposition, but the workpapers do include the Attiken deposition as well.

Q. Actually, so we're clear, Robert, and I might have missed something, I saw that you had relied upon several exhibits from Mr. Hoskins' deposition but I did not see that you relied upon his testimony or that you had read his deposition. So could you clarify that for me, please?

A. I did. And I noticed that a few days ago. I could have been certainly more clear.

I had said separate -- and it's simply a matter of actually the way I prepared this exhibit. These are separate manila file folders in a set of bankers boxes. But I did read his entire deposition, and I did rely on his entire deposition.

Q. Mr. Hoskins was deposed, believe it or not, three separate times in the case. Do you have any recollection which of his three

depositions you read? Maybe it's the one to which the exhibits you list here is associated?

A. I'm pretty sure I received all three days. I recall two. As I'm sitting here, I only recall --

Q. I just want to be clear. There wasn't three days of depositions. There were three separate depositions at different points in time.

A. Yeah.

Q. Okay.

A. And I recall -- if you had asked me, I would have said two, but I think I did receive all three.

Q. And did you review the entire transcript of all three?

A. Yes, I did.

Q. And did you -- again, is that an omission from the materials you relied upon in Exhibit I?

A. Yes. I certainly intended to mean when I reference his exhibits I merely simply should have said the Hoskins depositions and all of the exhibits. These are the ones that I had set up separate manila file folders for, but there's really nothing special about these

exhibits compared to the rest of the depositions.

Q. And I thought you might have mentioned, Robert, another deposition you relied upon that you inadvertently omitted from Exhibit I?

A. I think it's in here. It's the Marchetti deposition.

Q. Oh, yes. I did have a question about that.

What I saw produced in your production was a summary of Ms. Marchetti's deposition. Is that what you're referencing in Exhibit I, or did you read the actual transcript of her deposition in the Fish case?

A. No. I have the actual transcript. That's what I read. I received the summary from legal counsel, but actually I wanted to read the deposition itself.

Q. And I do see that listed. So I apologize that I mentioned that I didn't see any deps listed. I assumed reading it that it was a summary, but now your recollection is you read her entire transcript?

A. Yes.

Q. And I apologize again if you said this

and I missed it, but did you rely upon any portion of Chandra Attiken's deposition in formulating your opinions in this case, to the best of your recollection?

A. Not specifically. That may be why I inadvertently didn't include it in here. I don't quote her. I don't rely on her as a source for a specific fact. But why I put it, of all the depositions I put those three in the box, particularly Ms. Attiken's. It had a good factual history of how the process worked and who talked to who and who did what to who.

So I would say I relied upon it for general background information, but I'm not using her as a source for any specific factual representation.

Q. Robert, other than Ms. Marchetti's deposition, Mr. Hoskins' deposition, Ms. Attiken's deposition, did you rely upon any other deposition testimony given in the case by fact witnesses?

A. I would say not specifically, no. I mean I did receive a lot of depositions. I skimmed through a lot of depositions. The assistant -- and at different points in time there were three different managers I had working for

me, but the managers who I had working for me read through a lot of depositions. But the ones that I specifically I would say relied upon are the ones I tried to mention in Appendix I.
Q. Okay. So if it's not mentioned in Appendix I or it's not Mr. Hoskins' deposition, which you inadvertently omitted, you did not rely on any other deposition testimony in this case in formulating your opinions.
A. That's correct.
Q. Thank you.
Robert, again, I know it's a long list and I'm not saying you purposefully failed to list anything here, but because you inadvertently left out the Hoskins transcript, I'm wondering are there any documents you can think of now or that came to mind while you were preparing for the deposition that you relied upon but were not listed in Exhibit I of your original report in preparing your original report.
A. I don't think so. It was hard to compare. And the difference is -- I recall what happened was. When I prepared Exhibit I, my workpapers were actually in this order. So I could simply go through and read the tab of each

manila file folder and that's how this list was created.
Q. I see.
A. Since I issued my report, I've reorganized the workpapers by category. So it was easy for me to --
Q. My question was a simple one. Have you been able to identify any documents you relied upon in preparing Exhibit 822 that are not listed in Exhibit I -- in Appendix I? I'm sorry.
A. I don't believe so.
Q. Okay. We'll of course get back to Exhibit 822, Robert, throughout the day. I do want to mark another exhibit for you at this point, and it is 823.
(Deposition Exhibit 823 was marked for identification.)
BY MR. SCHEIER:
Q. I just want to confirm that Exhibit 823 is the summary of Marilyn Marchetti's deposition testimony that I think you said you understood counsel prepared and provided to you.
(Document tendered to the witness.)
A. Yes, it is.
Q. And you reviewed this in addition to

reviewing her actual transcript?
A. Well, I did look at it, but, to tell you the truth, after the first page or so there was information on here that -- I mean I really wanted to rely on the actual transcript. I don't know why it was important to put on this summary that Marilyn is 64 years old and not on medication today.
So there's a lot of items that were in this summary that I didn't think Marilyn wanted me to know. So I'd rather rely on the actual, you know, instead of someone else's summary of a deposition, I'd rather rely on the entire deposition.
So this was in the file. I didn't ask for it. It was provided to me. I would say I relied on the deposition itself.
Q. All right. But you did review in general the deposition summary that's now marked as Exhibit 823, to the best of your recollection?
A. Yes.
Q. Okay. Since reviewing Exhibit 823, has counsel provided you with an affidavit that Marilyn Marchetti recently signed in this case?
A. No. They have not.

Q. Have they disclosed to you that she has signed an affidavit based on an interview that Mr. Gotto and others had with her in the last few weeks?
A. I understood that someone from GreatBanc had issued an affidavit, and I could have assumed it was Marilyn Marchetti. I don't remember that either Mr. Gotto or Mr. Greenwald specifically mentioned Marilyn Marchetti, but I understand that there had been some new document that had been produced.
Q. Did you ask to review that affidavit to see, to assure it's consistent with certain positions taken in your report?
A. No. I did not.
Q. Will you?
A. I certainly could. I mean I --
Q. I know you could. I'm asking as we sit here today do you intend to?
A. Well, the reason I didn't ask, I assumed that if there was some inconsistency that either Mr. Gotto or Mr. Greenwald would say you ought to read this because there's some new information that has come forward. And if there's any reason to think there was new information, I

certainly would want to look at it.
Q. And I will confirm with counsel of course, but I would ask you to update your disclosures in terms of what you reviewed and what you relied upon if, in fact, you look at Ms. Marchetti's deposition and rely on it for any new opinions or for any other reason with regard to the report.
A. I understand.
MR. GOTTO: You mean affidavit?
MR. SCHEIER: I'm sorry. What did I say?
MR. GOTTO: You said deposition.
MR. SCHEIER: I'm sorry. Yeah, affidavit. Thank you, Gary.
(Deposition Exhibit 824 was marked for identification.)
BY MR. SCHEIER:
Q. I have now marked Exhibit 824, and I would ask you to please identify that on the record and confirm it is in fact what's titled your "Rebuttal Report" dated July 15, 2015?
(Document tendered to the witness.)
A. Yes. This is the rebuttal report that I submitted in July of this year.

Q. And you drafted the entire report under the process similar to what you described for the April report?
A. Yes, I did.
Q. Did any lawyers edit or contribute to the report?
A. No, not to my knowledge.
Q. Now, I believe the documents you relied upon in the report that we've now marked as Exhibit 824 are listed in Tab 3. Did I get that right?
A. Well, it's Appendix B.
Q. Appendix B.
A. It's Page 40.
Q. Okay. I missed that. Right. It's your report, so I'm not surprised you know.
Can you confirm for the record that the documents listed on Appendix B are, in fact, the universe of documents you relied on or considered in preparing the July report that's Exhibit 824?
A. Yes, I believe so. I can't recall any other documents that I relied on.
Q. Okay. Thank you.
MR. SCHEIER: Let's take a short

break, please.
THE VIDEOGRAPHER: Off the record at 10:09 a.m.
(A recess was taken.)
THE VIDEOGRAPHER: This begins Disk Number 2. Back on the record at 10:20 a.m.
BY MR. SCHEIER:
Q. Welcome back, Robert.
Were you asked to formulate any opinion in this case that, other than those you just described, that you were unable to -- strike that.
What I should say is were you asked to form any opinion in this case other than the ones that appear in both of your reports, Exhibits 822 and 824, that you felt were incapable of forming?
A. No. I was not.
Q. And in your professional judgment, have you reviewed all the materials that you deem necessary in order to form the opinions that are contained in Exhibits 822 and 824?
A. Yes, I believe so.
Q. And do you hold any opinions that you plan to testify to at trial in this case that are

not found in Exhibits 822 and 824?
A. No. I do not.
Q. If you could turn to Exhibit 822, Robert. I want to just talk a little bit about the structure of your report as it relates to what you call I believe the first flaw in Duff's valuation analysis.
A. Yes.
Q. If you could please turn your attention initially to Page 12. And in particular I just want to confirm that Paragraphs 35 to 42 summarize your opinion in regard to what you've called the first flaw in regard to Duff's fairness opinion; is that right?
A. Yes, that's correct.
Q. Let's focus on Paragraph 35 at this point. Paragraph 35 begins where you write "For the first flaw, the GreatBanc analysis did not adequately consider." I just wanted to stop there.
When you refer to the "GreatBanc analysis," you're referring to Duff & Phelps' fairness opinion?
A. Effectively. I define "GreatBanc analysis" a little bit earlier as really all of

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the Duff & Phelps work culminating in the fairness opinion.

Q. The first is industry technological changes facing Antioch.
Do you see that?
A. Yes.
Q. And I just want to understand. Are those fully described at Pages 33 through 36 in Paragraphs 117 through 131? And, again, I just want to kind of wrap my arms around the structure of your report.
A. That's correct. And I added a little bit more detail in the rebuttal report, but it's the same issue that I'm describing on Page 33.
Q. And I appreciate that qualification. We'll get to the rebuttal report. But right now I'm just focused on this report in relationship between Paragraph 35(i) and the paragraphs that we just discussed that set out the industry trends that in your view GreatBanc did not adequately consider.
A. Okay.
Q. And those are found in Paragraphs 117 to 131, and there might be some additional stuff in your rebuttal report.

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A. Yes.
Q. Okay. The second area where your view is that Duff or the area of information that in your view Duff did not adequately consider was industry consumer preference changes facing Antioch.
Do you see that?
A. Yes.
Q. Is that also subsumed within the industry technological changes that you describe in Paragraphs 117 to 131?
A. Yes, it is.
Q. Then the third area that in your view Duff did not adequately consider were the two Deloitte projection models or feasibility models from later in 2003; is that right?
A. That's correct.
Q. Okay. Later on in the report, and this is what I thought might be missing from Paragraph 35, you write extensively that Duff did not adequately consider Antioch's company specific business trends.
I didn't see a reference to that in Paragraph 35, but I just want to confirm that, in fact, that is your view and you set those out in

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your Paragraphs 100 to 116.
A. That's correct. I don't know if I really -- you could call that a separate topic. I really meant to incorporate that.
Q. I wasn't being critical. I was just wondering if that was --
A. That's part of Paragraph 35. I guess I could have considered saying those are some of the topics that were considered by Deloitte & Touche but not by Duff & Phelps.
But I do mean to say that the information that starts on Paragraph 100 should have somehow been baked into the Duff & Phelps analysis and I did not see that it was.
Q. And, again, you're referring right now specifically to what you've written in Paragraphs 100 to 116.
A. Yes.
Q. And that could be an independent Romanette added to Paragraph 35, you just chose structurally not to do it that way.
A. That's correct.
Q. When you say that the Deloitte & Touche models accounted for the company trends in Paragraphs 100 to 116, are you referring to any

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actual evidence you saw or is that an assumption you're making based on the actual projections going out over the study period?
A. Well, it's really a combination of looking at the projections that Duff relied upon and the discount rate that Duff selected to apply to those projections.
I didn't see, and as I said in my report I looked through not only the actual documents themselves, the several reports that Duff & Phelps issued to GreatBanc, but I was provided all their workpaper files. So I looked through boxes of workpaper files and I didn't see any specific consideration of these topics.
Q. I might have misasked the question or you misunderstood my question. I was focused on the two Deloitte models.
A. Oh, I'm sorry.
Q. No, that's okay.
My question is did you see any evidence in the record other than the projections themselves and the direction they went indicating that Deloitte, in fact, took into account the company trends identified in Paragraphs 100 to 116 of your report?

A. I'm with you now. I would say no, it's my interpretation of the projections that they relied upon.
Q. Other than the categories of information that Duff's analysis did not adequately consider in your view listed in Paragraph 35 and in Paragraphs 100 to 116 in regards to company trends, anything else that's not listed in your report that you believe Duff & Phelps did not adequately consider in preparing its fairness analysis?
A. I would say not, not within the first flaw. Then there's the second and third flaws. But within the first flaw it's really the issue we've just talked about.
Q. Okay. Great, Robert. I'm not trying to be tricky or leave something out. We'll get to each of the flaws independently because I understood you analyzed them independently.
A. Yes, I did.
Q. Okay. Now, in conjunction with your first flaw analysis, Robert, is my understanding accurate that you ran five discounted cash flow models that in your opinion accounted for the categories of information that we just identified?

A. Yes, sir.
Q. And are those found in your Exhibits 14 to 18?
A. That sounds about right. Let me get to that. That is correct.
Q. Let's look at those, if you wouldn't mind, so I can get an understanding of the methodology that you or, to your understanding, Mr. Buchanan used to quantify the risks we just discussed that you view are not adequately considered by GreatBanc and Duff. Why don't we start with Exhibit 14.
A. Okay.
Q. My understanding is Exhibit 14 is a spreadsheet showing a DCF that incorporates the Duff & Phelps projected financial statements but you add a company specific risk factor to get to, or a company specific risk premium, to Duff's analysis to get to what you deem to be fair market value of the company's stock.
A. That's right. Really, the only change in Exhibit 14 is the change in the discount rate. So I'm ultimately saying that Duff & Phelps could have either changed the projections or relied on different projections and used its discount rate

or relied on the projections it did rely upon and use a higher discount rate. And for Exhibit 14 I keep the same Duff & Phelps projections and I increase the discount rate.
Q. I see. And you increase the discount rate by application I think, I might be wrong, I'm just a dumb lawyer, right, you're the expert, but by a factor that's known generally in your world as a company specific risk premium?
A. That's correct.
Q. All right.
A. That's really the only difference between Exhibit 19A and 19B.
Q. Yeah, we'll get to that. I want to stick with Exhibit 14 for the moment, please.
So on Exhibit 14 on this spreadsheet, am I to understand that all of the inputs under cash flow components up to discount periods is drawn from Duff's projected financial statements?
A. That's correct.
The only thing that I added here above the discount rate that's different is the last two weeks of 2003, which really is not a material change at all.

Q. Then just below discount rates you have the present value factored at 18 percent.
Do you see that?
A. Yes.
Q. And this is where Exhibit 14 differs from Duff's equivalent spreadsheet that you were looking at; correct?
A. That's correct.
Q. And Duff used there a present value factor of between 12 and 14 percent; correct?
A. That's right. They used 12, 13, and 14.
Q. So 13 fell in their middle, the middle of their WAC range, their discount factor range.
A. That's correct. And their ultimate enterprise value conclusion is based on their 13 percent discount rate.
Q. And when you use a present value factor there, the 18 percent, the components are 13 percent present value discount rate that you independently arrived at plus your company specific risk premium of 5 percent?
A. Effectively, yes.
Q. Now, let's turn to Exhibit 19 that you had mentioned a moment ago.

Q. And so I understand, Exhibit 19A is showing the means by which you arrived at what's known as a weighted average cost of capital or I think known as WAC.

A. Yes.

Q. And it shows that through a couple of I think two different methods, you arrived at WACs of 12 percent and 14 percent and took the average of 13 percent.

A. Not really. Technically what I do is average the two cost of equity capitals --

Q. I see.

A. -- to come up with an average cost of equity capital, then weight that in with a cost of debt capital to come up with an overall average of 13 percent.

Q. I see. And that is one of the WACs that Duff also came up with that you testified to?

A. Yes.

Q. Okay. Then if you turn to Exhibit 19B, you've basically done the same analysis but there's a line item here known as company specific risk premium 5 percent; is that right?

A. That's correct. So I'm adding a 5 percent company specific risk premium to my two

cost of equity capital indications to come up with a cost of equity and then again I'm weighting that with the cost of debt to come up with an overall discount rate.

Q. Which was 13 percent and then you added to that 19B company specific risk premium?

A. Well, technically not, although the math is pretty similar.

I'm not adding 13 plus 5 to get 18. The 5 percent is added into the cost of equity capital, but based on rounding, because equity is such a big component of the cost of capital here, if you add 5 percent to the cost of equity capital you're effectively adding 5 percent to the WAC.

Q. I see. And that 5 percent entry is listed I see twice on Exhibit 19B, once in Model Number 1 and once in Model Number 2; correct?

A. That's correct.

Q. I noted that the sources are Willamette Management Associates estimate.

A. Yes.

Q. Did I read that right?

I didn't see an exhibit, and maybe I missed it, Robert, where you did a similar sort of calculation to arrive at that 5 percent. Did I

miss that?

A. No, not at all. And that line could also say simply Robert Reilly estimate. That is my estimate of the company specific risk premium.

Q. What methodology did you use, Robert, to quantify the risks identified in your report that Duff did not take into account in arriving at your 5 percent company specific risk premium in this case?

A. It's based entirely on my judgment.

Q. Okay. Is your judgment informed by any sort of a treatise or scholarly writing?

A. I would say not with regard to a conclusion of 5 percent versus 6 percent. I would say if you look at any of the general business valuation textbooks, there are going to be chapters on coming up with the cost of equity capital and several pages or entire chapters in the case of the book called "The Cost of Capital" textbook on how do you come up with the cost of equity capital, how do you come up with the company specific risk. But all of the factors are subjective, they're not quantifiable.

Q. So, as you state, it was purely your judgment and your decision to apply a 5 percent as

opposed to a 6 percent or a 4 percent?

A. That's correct.

Q. Why didn't you apply a 6 percent company specific risk premium or a 4 percent company specific risk premium?

A. Well, I looked at -- typically what I'm trying to do here is, in this case I believe, and, again, this is a judgment, that there's another quantum level of risk that's associated with this company, with Antioch, that's not identified or not quantified in other companies because you derived the weighted average cost of capital from other companies.

Q. Yes, and that's where my question goes. You've identified industry trends, business trends, consumer trends that you perceive were risks that were known or knowable in December 2003, and I get that.

What I don't understand, and maybe you've answered it and I apologize if I've asked you, how you then quantify the risks that you've identified in your report, and I understand there are no other risks you considered, into a 5 percent company specific risk premium. Was there any methodology at all that you used?

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A. Yeah. I was in the process of explaining that. I just didn't get to the conclusion.
So the first step is to decide that there's a quantum level of risk. Then I looked at the top of Page 19A or 19B.
MR. SCHEIER: Let's go off the record for a second.
THE VIDEOGRAPHER: Off the record at 10:39 a.m.
(A recess was taken.)
THE VIDEOGRAPHER: Back on the record at 10:41 a.m.
THE WITNESS: So I was looking at the top of Page 19A which is pretty much the top of Page 19B --
MR. GREENWALD: I can't hear anything, guys.
MR. SCHEIER: Let's go off the record again, please.
THE VIDEOGRAPHER: Off the record at 10:41 a.m.
(Brief pause.)
THE VIDEOGRAPHER: Back on the record at 10:42 a.m.

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THE WITNESS: So the one method that Duff & Phelps and I both used is the capital asset pricing model. In fact, I think just about all of our variables except for the 5 percent are pretty much exactly the same.
Now, there are three quantum levels of risk identified in the capital asset pricing model.
BY MR. SCHEIER:
Q. I'm talking about the company specific risk premium.
A. I'm getting to that.
Q. Can you prepare an exhibit similar to the one we're looking at now, 19B, that shows me how you arrived at a 5 percent company specific risk premium?
A. Give me 60 seconds. The answer is yes, average 5.1, 7.0, and 2.1.
Q. And are you deriving that methodology from a treatise? Because you said it was just your judgment and now you're telling me it was a calculation that you undertook. Which is it?
A. My judgment is I wanted to add one quantum level of risk.

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Q. I see.
A. We know what the three quantum levels of risk are already, and we know that those average about 5 percent. Obviously I'm rounding off here.
Q. Yeah.
A. I wanted to add another quantum level of risk. If I know the three quantum levels of risk that are identified in CAPM that both Duff & Phelps and I agree to are 5, 7, and 2 --
Q. Yeah.
A. -- and I wanted to identify one more quantum level of risk, it's going to be in the range of 5, 7, and 2 and it's going to be in about the middle of that range. The middle of that range, both as a mean and a median, is about 5 percent. So I wanted to add about 5 percent. And there's no more science or mathematics to it than that.
Someone else could say, and here would be the disagreement and I think it would be a legitimate area of debate. Another analyst would say well, I think there should be a half of a quantum level of risk. So I'm not going to --
Q. Actually, you raise a good point. I'm

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wondering how you derive now that you've explained -- and I do appreciate that. Thank you for taking the time.
How did you derive one quantum level of risk from the specific company, consumer, and industry trends that in your view Duff did not adequately consider in valuing the company's stock in December 2003?
A. Well, that is entirely a judgment. There's no formula for that.
Q. There's no methodology for getting from those specific risks to one quantum level of risk? Is that what you're saying?
A. Right, because there are different methodologies you could use, none of which are quantitative.
Q. Okay.
A. And --
Q. I appreciate that. If we can now maybe turn back to Exhibit 14. I see there's a line item in fair market value of invested capital.
A. Yes.
Q. Is invested capital a synonym for enterprise value?

A. Yes, it is.
Q. Okay. Now, your ultimate conclusion after applying the WAC of 13 percent and the company specific risk premium of 5 percent is that the fair market value or the enterprise value of Antioch as of December 15, 2003 was $261,683,000?
A. Almost. The only thing I would change there is the WAC is 18 percent, the WAC incorporates the 5 percent. It's not added onto the WAC. It's built into the WAC.
Q. I see.
A. But I concluded a WAC of 18 percent as opposed to the Duff WAC of 13 percent, and I concluded an enterprise value of 261, $262 million.
Q. And if you back the 5 percent company specific risk premium out of the WAC, you and Duff would have the same enterprise value at the end of your calculations, more or less. There would be no material difference; right?
A. There would be no material difference. The only material difference between my Exhibit 14 and their analysis is they use 13 percent discount rate, I use an 18 percent discount rate.
Q. Understood. Thanks, Robert.

Now, if you would turn back to Exhibit 20, I just want to confirm that -- I apologize. I shouldn't ask until you're there. Let me know when you get to Exhibit 20.
A. I'm there.
Q. Okay. Now look at Exhibit 20 and also kind of keeping Exhibit 14 in mind, your enterprise value conclusion after applying the 18 percent WAC, which incorporated your 5 percent company specific risk premium, is found in the second column, is that right, that says Duff & Phelps 10/27/03 and it's the first, it's the top line, the 261,683?
A. Exactly.
Q. I see.
Then if we turn to Exhibit 15, which I believe is the second DCF you ran, the first being the one with the company specific risk factor, or premium, on Exhibit 14, now we're on Exhibit 15. The second DCF uses, or used, revenue projections based on Deloitte's October 2003 model?
A. Yes. Technically it's October 2002, October 2, 2003 model.
Q. Yes, you're right. It is. Thank you.

A. And it's not just a revenue projection. It's their entire financial projection.
So I took their entire financial projection, and all I'm really doing on Exhibit 15 is reformatting the big downside scenario Deloitte projection and now -- so I'm using different projections but the same discount rate that Duff & Phelps used.
Q. And you just used the words "big downside." Did you derive that -- that's what Duff called that particular version of their model; correct?
A. That's actually what Deloitte calls their particular version of the model.
Q. If I said "Duff," I'm sorry, I meant Deloitte. Thank you.
So I'm clear, similar to Exhibit 14, the inputs under cash flow components from pretax income down to net cash flow are derived from Deloitte's big downside dated October 2, 2003?
A. Yes, sir.
Q. And then the next two lines are your partial period adjustments that you referenced in

conjunction with Exhibit 14?
A. That's right. And that's only for the two weeks of 2003, the last two weeks.
Q. Yes. And then the present value factor, 13 percent, is consistent with your WAC.
A. That's right, and the --
Q. And Duff's WAC.
A. The Duff & Phelps WAC.
Q. And then I see using the Duff big downside and the discounted cash flow analysis, you arrive at the bottom of Exhibit 15 of an enterprise value as of December 15, 2003, of just under 124 million?
A. Yes.
Q. And then that translates into Exhibit 20 on the third column that's labeled "Deloitte & Touche 10/2/2003"?
A. Yes, it is.
Q. Then if you would be so kind, Robert, as to turn to Exhibit 16. Exhibit 16, as I understand it, is the third of your five DCFs, this one based on a Deloitte model known as downside.
A. That's correct.
Q. And I see you I believe accurately

show that that model was dated December 2, 2003?

A. That's correct. So that's the closest to the transaction date. That's the Deloitte December 2, 2003 big, not big downside, downside scenario.

Q. And similar to the prior DCFs we looked at that you prepared, the cash flow components other than the partial period adjustment are inputs derived from Deloitte's December 2, '03 downside projections; correct?

A. That's correct.

Q. And this, again, applies your and Duff's 13 percent WAC, "this" being Exhibit 16?

A. Yes.

Q. And you arrive at an equity value of just above 145 million; correct?

A. That's correct.

Q. And then that is, I've just learned this from you, that's baked into your Exhibit 20 on the column that's listed Deloitte & Touche 12/2/2003?

A. Yes.

Q. Okay. Then if we can turn, please, to the fourth of your five DCFs. That is a DCF, as I understand it, Robert, based on the projections

prepared by Mr. Buchanan and that he labels as "FTI 1"; is that right?

A. Yes.

Q. I just want to be sure the structures are all the same. All of the inputs under cash flow components, except for the partial period adjustment, are derived from Mr. Buchanan's FTI 1 projections; correct?

A. That's the starting point.

Q. Yes, well, I don't know what your qualification meant, so I want to be clear.

I'm just trying to find out structurally the spreadsheet that's Exhibit 17 follows form to the others in the sense that all of the inputs under cash flow components you took from work of Mr. Buchanan, or is that not right?

A. That's not right.

Q. Okay.

A. That's what I wanted to explain.

Q. Yes, please do.

A. The format of 15, 16, and 17 are all the same.

Q. Yes.

A. On 17 and 18 what I want to emphasize is Buchanan, or FTI, comes up with the top line

projection only. So they're projecting -- in fact, it's not even on here.

Q. Yes.

A. They project revenues and they did not project anything below revenues. Well, revenues is the starting point for me. It's not the ending point for me.

So I had to take their revenue projection and convert that into an income statement projection and then convert the income statement projection into a cash flow projection on Exhibit 17.

So there's another exhibit we can look at that's an intermediate step where I take the FTI revenue projection and I apply various expense ratios. The various expense ratios for each line item is the average of the expense ratios in Duff & Phelps and Deloitte & Touche.

Q. And I recall those exhibits. They're prior to this. So thanks for reminding me of those.

Okay. So I think I understand then how you populated the rows that are under cash flow components with your starting point being FTI 1's revenue projections.

A. Yes, sir.

Q. And then following form with the prior exhibits, except for Exhibit 14, you apply yours and Duff's 13 percent WAC.

A. That's correct.

Q. And then make some other adjustments to arrive at an enterprise value based on the DCF in Exhibit 17 of just above 216 million?

A. That's correct.

Q. And then that is found on your Exhibit 20 in the column labeled "FTI Sales Forecast 1."

A. Yes.

Q. All right. And then FTI 2, which I'm not going to ask you any questions about, is just based on a second set of projections that FTI prepared. And the enterprise value conclusion of Exhibit 18 is the last column on Exhibit 20; correct?

A. That is correct.

Q. And then on Exhibit 20 this is showing fair market value on a per share basis using as the top line the various enterprise values from the DCFs we just looked at and then the first column being, with the first column being the exception, that's Duff's actual number derived in

December, in or around December 2003; correct?

A. That's correct. The first column is Duff & Phelps unadjusted, that comes directly from their analysis.

Q. Correct. And then the balance are the DCFs we just looked at and you derive a per share value from those DCFs; correct?

A. That is correct.

Q. My understanding, again, in kind of a structural sense, Robert, in respect to your report is that your damages opinion, which is approximately $95 million in regard to the first flaw, in getting there you rely on FTI 1's projections as your starting point; correct?

A. That's correct. That's why I selected 95 million, within the range that's on Exhibit 20.

Q. Yes. I think you used the word I'm relying on FTI 1 to formulate my opinion that the damages under my first flaw analysis to the company is approximately $95 million.

A. Yes, sir.

Q. And the other DCFs that you've run, the four others, are basically checks on the FTI 1 analysis; correct?

A. Well, I wouldn't say it that way

because that wasn't the sequence.

The sequence was I believed that the Duff & Phelps analysis didn't include all of the risks of the business going forward. There are two ways that the analysis could be changed either by changing the discount rate and leaving the projections or changing the projections and leaving the discount rate.

Q. Okay.

A. So I performed several different analyses to look at alternative valuation conclusions, and that's how I prepared Exhibit 20 up until the very bottom row across. And now I have five different indications of stock price that range from a low of $315 per share to a high of $590 per share. Ultimately that gives me damage indications of $70 million to $145 million and I had to, now I have to pick something.

Q. Yes. And I understand that you picked FTI 1 because it incorporated in your view all known and knowable information that existed as of the transaction date.

A. That's right. But that wasn't -- I didn't perform that analysis first and then look for supplemental confirmatory evidence.

Q. Yeah.

A. I performed all five different analyses and asked myself what do I do now. And there are different things I could have done. I could have used a mean or a medium or an inter-cortile range or just picked one. And ultimately I just picked one, but it was intended to represent a representative damages estimate from within that range.

Q. Why did you not choose to do the other analyses as opposed to exercising your judgment in picking FTI 1 on the basis that it incorporated all known and knowable information that existed as of the transaction date?

A. Well, I would say it really is for the reasons that I mentioned. There are positive elements and negative elements. The positive element is I thought FTI 1 --

Q. I can tell where you're going. I'm wondering why you didn't do any sort of additional analysis and instead chose to pick one of these. You had mentioned you could have done a cortile analysis --

A. Sure.

Q. -- you could have done a weighted

average, you could have done a median or a mean.

My question is why did you exercise your judgment not to undertake those analyses, use those methodologies, and instead chose to pick one of the results that's derived from one of your DCF analyses.

A. No, I understand. I was trying to answer that. And, by the way, I did do all of those. All of the alternatives give me a higher damages estimate than the one I selected.

Q. And are those other alternatives found anywhere in your report?

A. No.

Q. Okay.

A. But the reason I calculate them and you're averaging five numbers and it's easy to do.

Q. I see. I just didn't see any of that in your workpapers either.

A. That's right.

Q. So I'm just wondering did you retain any of that work?

A. Well, I don't know that I even printed that out. I mean you do that on the computer screen just by looking at it.

Q. Oh, is that because sometimes

analysts, whether they work in a litigation context or not, sometimes run financial analyses on computers and don't always see a need to print them out? They recognize the result and move on and don't print the result of their work product?
A. Well, I guess that's possible. That wasn't the reason --
Q. Sounds like that's what you did here.
A. Well, what I did is what I described.
I considered looking at a mean, looking at a median, looking at an inter-cortile --
Q. Well, I understood you did look at those.
A. I did, yeah.
Q. And you looked at that on your computer?
A. Well, I may have looked at it by looking at the numbers. It's not hard to average five numbers.
Q. Well, for me it is. I would have to actually write down the five numbers and do a division, but that's neither here nor there.
What I'm asking you is I thought you testified you, in fact, did those analyses on

a computer but didn't print them out which is why they're not in your workpaper, sir. That's what I'm exploring.
A. I can't testify -- I don't recall whether I did it on a computer, on a calculator, or on a napkin. I just don't recall. But I do recall calculating the mean, the median, and the inter-cortiles, all of which are higher than $95 million.
Q. And why did you choose not to use the results of those analyses?
A. Well, I was trying to answer that question before.
There are positive reasons and there are negative reasons. The positive reasons are the ones that I mentioned in the report, which is the FTI analysis includes all of the information that was available to anyone close to the valuation date.
Q. I see.
A. And it includes subjective data -- I'm sorry -- it includes objective data. In other words, it's prepared without any subjective influences by the preparer.
All of the other analyses, whether

it's Deloitte or Duff & Phelps, have subjective input. And I'm not saying there's a bias in there. They just have subjective input as opposed to objective input.
Q. So what was attractive to you was that the FTI analysis used solely objective input and at the same time incorporated all known and knowable information that existed as of the transaction date.
A. Yes, sir.
Q. Okay. And when you talk about the information, is that inclusive of the information that you believe Duff did not adequately consider in its valuation analysis pre-transaction?
A. Well, either it wasn't provided to them or it was provided and they didn't consider it. But I would say the FTI revenue projection, because it's based on historical factual information, captured all of the market trends that were influencing Antioch as of the time of the data cutoff point for FTI, not the analysis that's prepared in 2015, but as of the data cutoff in 2003.
So I think that made that an attractive selection for me. But that was a,

again, a judgment. Another analyst could make the same judgment that I'm going to use the mean or the median or some other indication from within this range.
Q. Is it also fair to say another analyst might choose to use your calculation that incorporated a company specific risk premium into the WAC? That would be another analyst might choose reasonably to rely on that, correct, as a damages calculation?
A. I'm sorry. I didn't understand.
Q. You had said -- I thought you were saying that another analyst could reasonably choose to use a mean, median, cortile sort of approach. You chose not to. Instead, you chose FTI 1.
I'm wondering if the same could be said about using the other DCF results to measure damages. A reasonable analyst could choose any of the calculations, the DCFs, any of your five DCFs, as a measure of the damages resulting from flaw 1.
A. I'm not quite sure I understand. I think we're agreeing that there are five different indications of damages here. That's the reasonable range. I selected one point within

that range. Someone else could select another point within that range, and I don't think they'd be wrong by doing that.
I think you're asking me could another analyst select another company specific risk factor, if that's what you're asking.
Q. No. That's not what I'm asking.
A. Oh, I'm sorry then.
Q. I'm asking whether another analyst can pick, for example, your DCF adding the company specific risk premium as the model to calculate the damages arising from the first flaw.
A. I think we're agreeing on that.
Q. Okay.
A. In other words, I'm saying there are five different indications of damages. I obviously gave more weight to one of those indications, but I think the five indications represent the reasonable range. And as long as you're somewhere within that reasonable range, probably not at either extreme of the range, then that would be a good indication of damages.
Q. And so a reasonable analyst can pick any of the five indications of damages that you have set out in Exhibit 20 and it would not be

unreasonable; correct?
A. Well, I did have one modifier in there. Don't forget I also said and not at either end of the range.
Q. Okay.
A. So I wouldn't recommend either the high point in the range or the low point in the range because then you're kind of at the extreme points.
That's why before I suggested you could be at the average, you could be at the median, the midpoint, you could be at the inter-cortile range. In other words, you can take out the two extremes and average what's left over.
Q. Yes.
A. And in all of those cases, you get to a number that's higher than $95 million. But I'm not saying that 95 is right and no other indication within this range is wrong. If I was saying that, I would have only presented Column 4 and nothing else.
Q. Right.
A. I do believe that Duff & Phelps didn't adequately consider certain risks facing the company in 2003, and there are a number of

different ways you could take those risks into consideration. And if you do that, any of those ways will give you damages in the about $100 million range.
Q. Yeah, nothing specific. It's just any of these, other than the extremes, could be used, including calculations you've done that you either didn't retain or never printed out, and those would be, to your mind, acceptable measures of damages in regard to the first flaw.
A. That's correct.
Q. Okay.
A. But, again, of that range, however you measure it, I thought $95 million was the best point estimate. But I couldn't say that one of the other indications would be wrong.
Q. You thought it was the best point estimate because you had understood that Mr. Buchanan's projections took into account all known and knowable information that existed as of the transaction date.
A. And the revenue projections and were based entirely upon factual information as opposed to subjectively manipulated information. Again, not making that sound like there's a deliberate

bias, but in any set of financial projections there's a subjectivity factor that enters into this.
And the other thing about FTI is those projections were prepared outside of the context of a transaction. In a transaction --
Q. Right. They were prepared in the context of litigation; correct?
A. Well --
Q. Is that a "Yes" or "No"? That's a simple question, sir.
MR. GOTTO: Mike --
BY MR. SCHEIER:
Q. The FTI projections were prepared in the context of litigation, correct, not in the context of a transaction?
MR. GOTTO: Mike, you've cut him off in the middle of his answer, and you've done that a number of times. So I'd appreciate if you give him the opportunity to complete his answer.
MR. SCHEIER: That's fine.
BY MR. SCHEIER:
Q. The question is very simple --
A. No, I understand the question.

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Q. Okay.
A. And the answer is yes and no.
Q. No.
A. No, it has to be.
Q. Sir --
A. No, it really is.
Q. Sir, who asked FTI to prepare its projections? Was it plaintiffs' counsel in this case?
A. Plaintiffs' counsel.
Q. Okay. Was the FTI projection prepared for any reason other than use in this litigation, to your knowledge?
A. Not that I'm aware of.
Q. Okay. Thank you.
A. But that does not invalidate my answer of yes and no. And if you'd let me explain the answer, the methodology that FTI uses -- because you're going to hear this in the trial. Don't you want to hear this today, Counselor. At the trial I'm going to say the method that's used here is a method that is uninfluenced at all by the purpose of the analysis. The method that FTI used is like using the Pythagorean theorem. And we all remember that from high school; right?

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Q. Well, I don't --
A. A squared plus B squared equals C squared.
Q. No. I don't remember the Pythagorean theorem. But what I can --
A. All right. Well, quickly, A squared plus B squared --
THE REPORTER: Hold on.
BY MR. SCHEIER:
Q. Sir, I have limited time and so you need to answer my questions. And what I choose to bring out to discover what you're going to say at trial, it's to my detriment if I don't.
A. All right. I was just trying to help you.
Q. I appreciate that.
A. I didn't realize you were short on time.
Q. I appreciate that -- well, I might not be. Are you willing to sit for longer than seven hours?
A. Oh, I'm willing to go all day. I'll tell you that.
Q. Well, are you willing to give me more than seven hours of testimony?

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A. I didn't know there's a rule.
MR. GOTTO: There's a seven-hour rule.
THE WITNESS: Oh, okay.
MR. SCHEIER: There you go. So I'm on limited time.
THE WITNESS: Okay.
BY MR. SCHEIER:
Q. Do you have any knowledge of how Mr. Buchanan's ARIMA model projecting out revenues into the future took into account what you say is the known and knowable information including, for example, the company industry and consumer preference trends that were going to occur far out into the future?
A. Sure. And I can't explain to you all of the statistics but it's an auto correlation, auto regression model, that is based entirely on factual data. And whatever micro or macro economic factors have influenced that factual data, those will be picked up in the auto correlation and auto regression analysis.
Q. Got it. And do you have any knowledge of how that auto regression analysis and in general the ARIMA model picked up the number of

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digital cameras that were being purchased in the market generally by consumers in 2003?
A. Sure. To the extent that the digital cameras affected the sales of Antioch products, they are included in the FTI projection because the FTI projection is based entirely upon historical sales of Antioch products.
Q. Well, let's stick with that then.
Did Mr. Buchanan confirm to you that the increase in the sale of the number of digital cameras in 2003 in fact had an impact on Antioch sales that year, which was the highest sales they ever had historically?
A. I didn't discuss that with him.
Q. Okay. Do you have any knowledge one way or the other that in fact -- or I should take a step back.
Can you identify for me any evidence or study indicating the impact that the sale of digital cameras in 2003 had on Antioch's revenues in 2003?
A. I don't know. I haven't seen a study.
There's a file of documents that I listed in Appendix I that we looked at before that, there are different groups of it. The

largest group I've called the Mizen memos that talk about how the company was concerned about the influence of digital technology in 2001 and 2002 and 2003.
I haven't seen any study that says with digital cameras our sales are 100, without digital cameras our sales would have been 150. I haven't seen anything like that.
MR. SCHEIER: Thank you. Take a short break, please.
MR. GOTTO: Sure.
THE VIDEOGRAPHER: Off the record at 11:14 a.m.
(A recess was taken.)
THE VIDEOGRAPHER: This begins Disk Number 3. Back on the record at 11:33 a.m.
BY MR. SCHEIER:
Q. Sir, focusing on the statements in your report and what you agree with here today that a factor or the principal factor that you considered in relying upon the FT 1 projections that incorporate all known and knowable information that exist as of the transaction date, I wanted to explore that a little bit more.
Based on your understanding of

Mr. Buchanan's work, do his projections take into account any plans by the company to introduce new products in 2003 or 2004, to the best of your knowledge?
A. Not that I'm aware of.
Q. Do you know whether Mr. Buchanan's projections took into account any plans by the company to acquire new businesses in 2003 or 2004?
A. Not that I'm aware of.
Q. Do you know if Mr. Buchanan's methodologies took into account any other promotions or plans intended to incentivise the salesforce to sell more product into the future?
A. Not that I'm aware of.
Q. And do you know whether Mr. Buchanan's forecasting methodologies took into account any of Antioch's plans to expand into new markets that it hadn't been servicing in the years 2003 and 2004?
A. Not that I'm aware of.
Q. Okay. Are you aware of whether or do you have any knowledge that Mr. Buchanan's projections took into account any of the information that company management and company employees gave to Duff & Phelps and Houlihan Lokey and GreatBanc during the due diligence interviews

that those entities undertook in the second and third quarters of 2003?
A. I don't believe so. I think it's based entirely on historical sales.
Q. Do you share my understanding that Mr. Buchanan used a statistical model to project out Antioch's revenues known by the acronym ARIMA?
A. Yes, sir.
Q. Do you know what that acronym stands for?
A. I did, but I don't recall. It's in my report someplace, but I --
Q. Just sitting here today, you've forgotten?
A. Yeah. The only part that's important to me is it's an auto regression model.
Q. Have you ever been involved in nonlitigation based valuation of an ESOP company where ARIMA was used to project the sponsor company's future revenues?
A. I don't know.
Q. You just don't have a recollection one way or the other?
A. I just don't know one way or the other.

Q. Whether you were involved in such a transaction? That's what I'm asking.
A. I know what you're asking, but my answer is I don't know.
Q. Oh, I see. Okay. Got it.
Have you ever been involved in a nonlitigation based valuation of any type of company that used ARIMA to project the subject company's revenue stream over a 10-year period?
A. I don't know.
Q. Have you ever been an advisor to a transaction where you relied on sales or revenue projections derived from an ARIMA model?
A. I just don't know.
Q. What do you mean you don't know? Have you ever as an advisor in a transaction relied upon sales or revenue projections at all?
A. Surely.
Q. And you just don't know whether any of those sales or revenue projections were based on an ARIMA analysis one way or the other?
A. That's correct.
Q. Have you ever prepared in the context of a nonlitigation engagement forecasts of a company's sales and revenues?

A. I have not. It's not related to litigation. We just don't project sales. We don't do that.

We typically rely on management. Management gives us financial statement projections. The financial statement projections include revenue projections. How the actual procedure that management uses, the formula or equation that management uses to project their revenue, I don't know. They may be based on ARIMA. They may not be based on ARIMA. I just don't know.

Q. Is it not part of your regular due diligence as an analyst or an advisor to gain an understanding of how management came up with its projections that they're asking you to rely upon?

A. Not with regard to what formula that they use. What I want to know is how do those projections compare to history, I want to know how do those projections that were prepared in prior years where I can test those projections because I now have history, how good has management been in the past in projecting revenues, how are these revenue projections consistent with guideline publicly traded company revenue projections, how

are these projections consistent with projections that are industry revenue projections.

But we don't sit down with management and ask them what formula or equation do you use. Typically the people we speak to may not know that answer either. If we're speaking to the CEO or the CFO or the CMO, they probably have the revenue projections prepared by one or two levels of management below them and they may just not know that answer.

Q. So is it your experience that CFOs you work with sometimes don't know how the folks that answer to the CFO prepare the company's financial projections or what methodology was used to prepare those financial projections?

A. That wasn't my testimony.

Q. I thought I heard you say that the CFO of a company, in your experience, sometimes does not know how the finance group prepared or the sales group prepared financial projections from a methodological perspective.

A. No. What I said was --

Q. Okay.

A. -- the CFO may not know how the sales projection was prepared. The sales projection was

prepared by someone who may be several levels below the CMO who then gives that input to someone who's several levels below the CFO.

Q. And you think, just based on your experience as an advisor to businesses, that CMOs and CFOs and CEOs typically when they're looking at sales projections or revenue projections don't inquire as to the methodology that the underlings or people down the line used to project out those sales?

A. They may or may not. I don't ask them that question. I ask them the question how can I convince myself that these projections are reliable and supportable.

Q. And other than, and I understood your testimony comparing how management does by hitting their projections from a historical basis is important to you, you don't ever, in the ordinary course of your work, Mr. Reilly, or Robert, look at the methodology that management uses to prepare its sales and revenue projections to determine whether or not it is a methodology that's generally accepted in that business' industry for making such projections?

A. Well, honestly, I don't know what that

means, generally accepted in that business or industry. We get --

Q. Well, let me explain. That's used typically by companies in that industry to project their sales. Do you not find that to be a question you want to ask when determining whether or not you should rely on management's projections in valuations that you're asked to perform?

A. That's right. I don't ask that question.

Q. Okay.

A. I perform the due diligence I described a few minutes ago.

Q. That's fine.

Do you sometimes participate as an advisor in any lending transactions?

A. Yes.

Q. And in any such lending transactions, have you ever run across a lender that analyzes a potential borrower's sales by using an ARIMA statistical approach?

A. I don't know how borrowers analyze sales. Typically they're analyzing --

Q. I asked you about lenders. I'm sorry.

A. Oh, I'm sorry. I misspoke. Lenders.

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Typically the lenders are analyzing the same set of financial statements that we're analyzing. I don't know if they do any different due diligence on any line item than we do.

Q. In choosing to rely on Mr. Buchanan's ARIMA projections, Robert, did you undertake any due diligence to determine whether companies generally use ARIMA on a regular basis to project out over a 10-year study period sales and/or revenues?

A. No. I don't know either way.

Q. Did you ask Mr. Buchanan as part of your due diligence before relying on his projections whether in his experience companies generally, or company managements, generally rely on ARIMA projections to base, ARIMA projections of sales and revenues?

A. I don't think I asked him that.

I did ask him is this the methodology you normally use for your clients to project revenue, and he said that it was. I didn't pursue it further than that.

Q. And who are his clients? Do you know?

A. I don't know.

Q. Do you know anything about

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Mr. Buchanan's business, what his specific business line is?

A. No, I don't.

Q. Okay. Robert, if you'd be so kind, can you please turn your attention to Paragraph 137 in your report. It's on Page 36 if that's more helpful.

A. I have that.

Q. In Paragraph 137 you state that the FTI sales forecast 1, if you look in kind of towards the middle of the paragraph, incorporates other management directed and Deloitte & Touche prepared financial statement preparation.

Do you see that?

A. Yes.

Q. How do you understand the FTI 1 sales forecast incorporated either Deloitte's two financial statements or two models that you looked at as part of your DCFs or management projections?

A. I don't know that it does. I think that's incorrect.

Q. Okay. And how, to the extent you have an understanding, Robert, does FTI sales forecast 1 take into account, or incorporate rather, the current as of the transaction date direction of

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industry trends?

A. Well, again, FTI has to explain exactly how the statistics work.

As I understand ARIMA, trends continue. So if there's an upward trend, the model will project an upward trend. If there's a flat trend, it will continue to project a flat trend. If there's a downward trend, it will continue to project a downward trend based on a time series regression analysis.

So it will project whatever trends are currently manifesting themselves in the entity that it is projecting.

Q. And do you understand that ARIMA -- is it your understanding, I should say, that ARIMA takes into account company performance relative to management's projections at any given timeframe?

A. No.

Q. Okay. Did you come to an understanding generally in this engagement that as of December 15, 2003, on a year-to-year basis in the prior 10 years, including year to date to December 1, 2003, Antioch's sales had always increased when measured against the prior year?

A. Yes, that's correct.

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Q. Okay. I want to look a little bit at the industry trends that you had understood FTI 1 takes into account, or took into account, in analyzing or projecting out Antioch's sales and revenues over a 10-year period.

And, if you would, turn to initially Page 33. I just wanted to be sure. I wanted to ask you, you have no prior experience in either a litigation context or a nonlitigation context with the scrapbooking or hobby marketplace?

A. Well, you asked -- I would say that sounds like two different questions to me.

Q. Okay. That's called a compound question I think.

A. I can't recall other scrapbook companies that I've analyzed. I have analyzed other hobby companies. I think it's well known we installed the ESOP at Hobbico and I performed an ESOP appraisal for that for about seven or eight years. I think they use someone else now.

So we have worked for hobby companies that are ESOP owned companies.

Q. Was the one you mentioned Hobbico?

A. Yes.

Q. I apologize. It's not well known enough, at least to reach me.
A. Oh.
Q. But I appreciate your testimony.
A. It's called Hobby Corporation of America.
Q. Okay.
A. H-O-B-B-I-C-O. And they're headquartered here in Illinois.
Q. When you say "we," are you referring to Robert Reilly? Did you head up that engagement or --
A. For the initial transaction opinion I did. I've been reviewing the updated appraisals, I haven't been performing them.
Q. And what is the business of Hobby Corporation of America?
A. Actually, they are pretty well known under their brand names. They're a manufacturer. So they're more of a competitor I would say to the hobby market to Antioch.
They make models, model air, the types of models that you put together, model planes and model trains. If you go into a hobby -- if you are a craft person and you want to make

crafts, it's probably manufactured by Hobbico.
Q. So in the segment of the hobby market which is scrapbooking, you have no experience advising companies or in litigation related engagements; correct?
A. Not that I recall, no.
Q. This would have been the first one?
A. As far as I know.
Q. Okay. In conjunction with your report, did you or, to the best of your knowledge, the plaintiffs' counsel commission any study of that marketplace as it was in 2003 for purposes of your opinion?
A. Not that I'm aware of.
Q. If you look at your report in Paragraph 119 -- sorry. One moment. As Jacob pointed out to me, I'm referring to Paragraph 118, where you reference an additional analysis of the industry.
I presume you mean the scrapbooking industry?
A. Yes.
Q. And when you say "an additional analysis," you mean in addition to the industry overview that Duff had provided in a document in

this case known as Deposition Exhibit 119?
A. Yes. Paragraph 118 just refers to 117, right below it.
Q. And then the additional analysis follows in the Paragraphs 119 through 131?
A. Right, the next page or so.
Q. And is that the sum total of your analysis of the industry in addition to what you learned from the industry overview in the Duff report?
A. Well, I think these quotes are representative. You could see from Exhibit I that I have in my workpaper files and read a lot of industry research. And for the next couple of pages, 33, 34, and 35, I tried to present facts and quotations that are representative of what the condition of the industry was as of the end of 2003.
Q. And so what I'm seeing in terms of what your additional analysis is, it's basically regurgitating what you read in data that you pulled from an Internet search?
A. I don't know if it was an Internet search. It was research of the type we normally perform when we're performing a transactional

fairness opinion or valuation with regard to the subject industry.
Q. Can you describe for me in detail the analysis you did of what you found through your search for information as it existed in 2003 about the scrapbooking industry?
A. Well, I don't know what more detail other than I read through a lot of documents. In fact, the documents are listed, as I mentioned, in Exhibit I. They are industry reports, security analyst reports, information from the industry trade association, there are industry publications, and then there are general publications like the Wall Street Journal, the New York Times, and so forth, all of which describe the scrapbooking industry within the context of the hobby industry and some of this goes back to 2001 and 2002 and 2003.
Q. Got it.
So as I understand your answer, the analysis you undertook was researching materials from the relevant time period and then reading them.
A. Yes.
Q. You didn't do any sort of modeling of

sales trends in the industry or revenue trends in the industry; is that right?
A. That is correct.
Q. How did you define the industry? And I mean specifically the scrapbooking industry. How did you come to a definition of that industry?
A. Well, I don't know that I came to a definition. If the word "scrapbooking" was in the article, I read it. If the word "scrapbooking" wasn't in the article, I didn't read it.
Q. Did you find "scrapbooking" had a consistent meaning among the articles? Were you able to define that?
A. I didn't see any differences.
Q. Were you able to make a reasonable conclusion that the industry you were reading about in all these articles was the same industry that Creative Memories sold into or was a part of?
A. As far as I could tell.
Q. Right. On what basis were you able to conclude that Creative Memories, in fact, was a participant in what you were finding as the, quote unquote, scrapbooking industry?
A. Well, I didn't see any, that I can recall, I didn't see any discussion as I would

have seen in the past in other industries, I didn't see any discussion of various subsectors of an industry and certainly not with regard to the topics that I was looking for, which is what are the general trends, is the industry increasing or decreasing, is there more or less competition.
Q. And my understanding was that you had found the scrapbooking industry was increasing in terms of potential revenues and technological advances; correct?
A. That's correct.
Q. And I think in Paragraph 125 you note that the increase in digital cameras was based on your analysis and research team to be a benefit to the scrapbooking market; correct?
A. That's correct.
Q. I also understood, I actually found it fascinating because I hadn't known it before, in Paragraph 120 you had discovered that scrapbooking generated 2.5 billion in revenue in 2002 and was poised to grow?
A. According to the industry trade association.
Q. Did you have any reason to doubt the statistics that were in that report?

A. No. We typically rely on data from independent industry trade associations.
Q. Did you do any calculation of what the Antioch Company's percentage of that $2.5 billion market was in 2002?
A. No, but obviously it would be a very small percentage.
Q. Like less than 1 percent?
A. It would be about 1 percent, yeah, I guess.
Q. So what were their sales in 2002, if you recall?
A. For Creative Memories for 2002, $200 million and change I would say.
Q. And I also take from your report, I believe it's Paragraph 129, Robert, that the presence of Michaels and Walmart in the scrapbooking market was a factor, a piece of information, that Duff did not adequately consider in discounting management's projections?
A. Well, I didn't try to identify any one specific factor separately, but I did identify and say in my report that that is a, the retail segment of scrapbooking appeared to be growing very rapidly. All of the data that I was able to

obtain indicated that that was the growing segment of the scrapbooking market, the Michaels, the Targets, and the Walmart's, those however are not distributors of Antioch products, they're competitors to Antioch products, and that seemed to be a risk factor. And I did not see any specific analysis or consideration of that in the Duff & Phelps workpapers.
Q. Did you consider anything about Creative Memories that mitigated that risk factor?
A. Well, I mean if I was working for Antioch I would say --
Q. Well, no, I'm sorry, sir. My question is did you, Robert Reilly, identify or recognize anything about the Antioch Company or Creative Memories or its business models or products that mitigated the risk of increasing competition that you identify in your report?
A. Well, generally every company wants to mitigate competition.
Q. Sir, I really need you to answer my questions. I'm not here to have a nice, you know, chat with you over coffee. I need you to answer my questions.
In, for example, choosing your

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company specific premium, just as an example, did you take into account or consider any factors attributable to Antioch, its business model, or its products that mitigated the competitive risk you identified from the presence in the market of big box stores and other competitors?
A. I'm sure there are mitigating factors.
Q. That's not what I asked.
A. Well, I don't know what --
Q. I'm asking you if you considered it in coming up with your company's specific risk premium.
A. Well, that's the first time you've asked that question.
Q. No, it isn't. It's the second time.
A. No, it's not.
Q. I'm not here to fence with you.
In coming up with your company specific risk premium, I guess I'll ask this question: How much of that 5 percent is attributable to the increased competition that you deemed Antioch was going to be facing in the future?
A. I can't answer that.
Q. Okay. With regard to your company

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specific risk premium, did you consider any aspect of Antioch's or Creative Memories' business that mitigated the competitive risk you've identified several times in your report?
A. Yes.
Q. What mitigating factors did you consider?
A. Their size and reputation.
Q. Anything else?
A. Not that I can think of, but there may have been other factors. I just can't recall right now.
Q. I'm trying to avoid a situation where you're going to recall them at trial. I'm here now to exhaust your knowledge that you have. So I'm going to ask you to think real hard, Robert.
Were there any aspects of Antioch's business or Creative Memories' business that was unique to their business that served to mitigate the risks from increasing competition in the scrapbooking market in the period that was going to follow 2003?
A. Well, you asked me that and I gave you the best answer I could as I'm sitting here today.
Q. You can only think of two, its size

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and the quality of its products?
A. Those are the only factors I can think of right now. I didn't create a pro and a con list.
Q. Right.
A. That wasn't the way the 5 percent was developed.
Q. Okay. I think a moment ago you had estimated that Creative Memories' sales constituted a percent or less of the $2.5 billion market?
A. According to the hobby industry association.
Q. Which you rely upon in a sense because it's in your report as part of your industry analysis; correct?
A. Yes.
Q. Do you have any sense of how much of that market share Creative Memories was at risk of losing to retail competition?
A. No.
Q. Did you determine that Walmart and Target, for example, were -- or let me strike that.
In your analysis of determining

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whether Duff & Phelps properly took into account the competitive environment that Antioch was operating in, did you consider Target and Walmart to be direct competitors with Creative Memories for the same subset of customers?
A. No. I did not.
Q. You did not consider whether they were or you didn't consider them to be competitors?
A. Oh, I'm sorry. I considered them to be indirect competitors and not direct competitors.
Q. And what do you mean by "indirect competitors"?
A. Well, they sell the same products but they sell the products in a different way. As we talked about before, the Creative Memories' procedure is to sign up a consultant who is going to have parties in her house or the lady's house down the street and get a group of ladies together who are interested in scrapbooking and periodically sell them products as these ladies, they're typically ladies, develop their scrapbooking hobby.
In the case of Walmart and Michaels and Target, obviously there's no party plan there.

Consumers will walk into Walmart and decide they're going to, they're looking for either a photo album or a scrapbook and they're looking for all the materials that they put into the scrapbook, all the pictures and that sort of thing.

Q. Sure, sure.

A. So it's a different way of selling.

The only point I'm trying to make is a few years earlier, these gigantic retailers were not in the scrapbooking business in any material way. They entered into the scrapbooking business --

Q. Do you know when?

A. Each is different.

Q. Because in 2002 you noted it's a $2.5 billion industry. I'm wondering when you're saying a few years earlier they weren't in the market, what's your basis and what year did they enter the market is what I'm asking you.

A. Each one is going to be different. And I have to look up each one separately.

Q. Well, had you looked that up in preparing your report, or is that something you would have to do after we leave here today and turn out the lights?

A. No. It's in my workpaper files.

Q. I didn't see that in your workpaper files.

A. Well, I'm sure it's in there.

Q. Okay.

A. But the answer is each one would be different --

Q. That's fine. I want to talk about --

A. I think I'm going to answer your question. They entered the industry in the 2000 plus, not the '99 minus. So, in other words, we're talking the last couple of years. We're not talking five or 10 years ago.

Q. And you're sure of that?

A. That's my recollection.

Q. Okay.

A. I mean everything I'm answering you is my recollection as I'm sitting here today.

Q. Do you know what the size of the scrapbooking industry was from a sales perspective in 2001 relative to the $2.5 billion market that you discovered existed through your research in 2002?

A. I don't recall.

Q. Do you know what the size of the scrapbooking market was from a sales perspective in 2000?

A. I don't recall.

Q. Do you know what the size of the scrapbooking market was, the same market that was $2.5 billion in 2002, in 1998?

A. I don't recall.

Q. Do you think it might have been important to know that information to see how Creative Memories' sales or to see if there was a relationship between Creative Memories' sales historically and the growth or retraction of the scrapbooking market generally, to understand the relationship, because you identified it as a risk as of 2003?

A. Well, I didn't identify the growth of the market as a risk. What I identified primarily is the increase in digital technology. That's the risk I'm really identifying here.

Q. Oh, I'm sorry. I misunderstood. I thought you were saying that the presence of big box competition, other competition, was a risk to Creative Memories and that's a risk that Duff & Phelps didn't properly consider. Did I misunderstand your report and your testimony?

A. No, no. You're absolutely right. But that's not the primary risk. The primary risk is --

Q. Let's get --

A. -- digital technology.

Q. -- to that.

Okay. So when you say it wasn't the primary risk, what type of risk was it? A nonmaterial risk? A secondary risk? A tertiary risk? Can you explain?

A. It's none of the above.

Q. Okay.

A. But it's not the primary risk.

Q. What was it then in terms of I guess risk levels if it wasn't a primary risk?

A. I don't think I have risk levels. It was a risk factor. And all I'm trying to say here in my analysis is these are large competitors that are now devoting more time and more attention and more space to the scrapbooking industry.

Q. Well, but that's what I'm asking you.

Do you know how much time and attention they were giving the space, as you just called it, in 2000 and how that impacted, if at

all, Creative Memories' sales of indirectly competitive products?
A. I just don't recall that.
Q. Wouldn't you have liked to have seen that to understand if there's a relationship between the growth of the scrapbooking industry and Creative Memories' sales of indirectly competing products to see whether or not in fact historically it had been a risk?
A. I may have seen that. I just don't recall.
Q. Okay. Do you believe if you had seen that it would be -- or wouldn't you agree, I should say, that had you seen that it would be an important piece of information to take into account if historically it appeared that increasing competition in fact did not depress or negatively impact Creative Memories' sales of its products?
A. Well, I don't know that it did. I mean two things are happening simultaneously.
Q. It's really a "Yes" or "No" question.
I'm asking whether you would have considered it to be important information in analyzing whether or not in fact increasing

competition was a risk to know whether historically as competition in the scrapbooking industry grew it impacted in a negative way or in any way Creative Memories' sales of its products through its party plan method?
A. I think that would be relevant, and I believe I have that information. I just can't recall. But what I can recall is both the industry is growing and Creative Memories are growing simultaneously throughout 2002 certainly and for a while during 2003. So both entities are growing.
That does not mean that the fact that there are large competitors entering the industry there's not a risk factor to Creative Memories.
Q. Again, you keep using words that really don't make any sense to me, and I apologize. You keep saying that competitors are entering the industry. You're making some very serious claims in your report, and you're just now giving me fluff.
I've asked you several times when did these competitors enter the industry, sir. It wasn't in 2003; was it?

MR. GOTTO: Object. It's asked and answered.
MR. SCHEIER: No. It hasn't been answered. It's been asked several times. You're right about that, Gary.
MR. GOTTO: And he answered that it varied for the three that he's talking about.
MR. SCHEIER: I'm sorry. I don't believe he's answering the question.
THE WITNESS: Well, my answer remains. I don't recall specifically. My recollection is that these competitors were not all in the industry in the 1990s but were subsequent to 2000.
BY MR. SCHEIER:
Q. And you don't know one way or the other when they entered the market and how their entry into the market, whenever that was, impacted from a historical perspective sitting in a chair in December 2003 Creative Memories' sales of its products to its end users or end consumers?
A. Well, you asked a lot of questions in there.
Q. It was one single question. It really

was.
A. No, it wasn't.
Q. Sure, it was.
A. Then I can't understand.
Q. That's fine.
A. Break it down into smaller bits for me.
Q. I'll be happy to do that.
I just want to establish sitting here today you can't tell me when competition from big box outlets like Target and Walmart began to increase in the scrapbooking industry; correct?
MR. GOTTO: Asked and answered.
THE WITNESS: I can't recall without looking at my workpaper file.
BY MR. SCHEIER:
Q. And you also, sitting here today, don't recall ever looking at historically the impact, if any, that the entry into the scrapbooking market of competition from big box stores had on Creative Memories' sales; correct?
A. I don't think I analyzed that because I don't know that you can analyze that.
Q. I asked if you looked at it. That's all. Have you looked historically at increasing

competition and how it compared to Creative Memories' sales?
A. They were both increasing. I've said that several times now.
Q. Okay. Very good.
And you said that the increasing competition wasn't a primary risk. What do you mean, what do you consider to be a primary risk and how do you define that?
A. Well, a primary risk I think would be the first risk, and the first risk that I identified and I thought I made clear in my report is the rise of digital photography.
Q. Okay. Did you in determining that risk -- or strike that.
How much of, for example, your 5 percent company's specific risk premium is attributable to, did you say the rise in digital photography?
A. Yes.
Q. Okay.
A. I can't quantify that.
Q. And with regard to the rise in digital photography, did you in coming up with your opinion that Duff didn't take that development,

industry development, into account, consider any potential aspects or marketing plans or product development plans of Antioch that would have mitigated that risk that you identified of emerging digital photography?
A. Not specifically.
Q. Did you do so generally?
A. Well, I would say yes, I did.
Q. Explain to me that risk mitigation analysis that you went through in a general sense.
A. Sure. I conducted, as my report describes, a number of interviews with former employees, including Mr. Mizen, primarily on this topic. I spoke to other individuals, but --
Q. The other individuals are Wiser and Anderson?
A. Yes.
Q. Okay.
A. But with regard to Mizen in particular, he indicated to me, as I indicated in my report, that he believed that management, his recollection and the summation of a lot of documentation he had prepared contemporaneously, that management was not adequately addressing the impact of digital photography.

Q. Did you ever see any writing, contemporaneous writing, by Mr. Mizen telling management or anybody at the company that they weren't adequately addressing the emergence of digital photography in the marketplace or did you only hear him say that now 10 years later?
A. I don't recall anything in writing with the words "you're not adequately addressing this."
What I do recall, and, again, I don't have the documents in front of me, I do recall documentation that he prepared saying this is a serious threat to us.
Q. And did you then from that interview and seeing those documents endeavor to discover whether, in fact, the company took that information it was receiving from Mr. Mizen and others by the way and was, in fact, implementing strategies to enhance its business through digital photography friendly products?
A. I did not see that.
Q. All right. And is what you saw what the lawyers gave you access to?
A. Well --
Q. In terms of evidence in the case I

should say.
A. I would think so. I mean I didn't have any other independent access to the case files.
Q. As I looked at Exhibit I, I didn't see there any monthly narratives by an Antioch employee named Suzanne Johnson in 2003 that often reported on training the company was giving to its consultants on digital photography and digital photography products that were in research and development.
Did you see any of those?
A. I don't recall seeing that.
Q. Do you recall the lawyers providing you with any documents generated by Antioch's so-called digital team starting in about 2000 and proceeding forward?
A. I don't recall seeing that either.
Q. Do you think sitting here today if I'm able to prove at trial that those documents existed and that in fact Creative Memories was paying attention to the increasing use of digital cameras in the marketplace and developing products and services to meet that increasing use, that would have been information you would have liked

to have known in analyzing the actual risks Antioch was facing as it was proceeding from 2003 onward?

A. Well, surely I would like to know all information.

Q. Well, I'm talking about that specific piece of information. You have identified a risk, and in particular a company risk, that Antioch was not in fact heeding what you call warnings or statements by Mr. Mizen that digital photography was a threat.

So my question is if I'm able to prove at trial that, in fact, the company was providing services and developing products to meet that increase in the use of digital products in the marketplace, it would have been important for you to see and factor into your analysis that it was, in fact, a risk?

MR. GOTTO: Object to form.

THE WITNESS: I certainly would have liked to have seen that information.

BY MR. SCHEIER:

Q. And did you come across any evidence in this case that was provided to you by the lawyers that you considered to provide some

mitigation against the risk that the emerging digital photography market was posing or, as you understood, was posing on Antioch?

A. Not that I can specifically recall right now.

Q. When you were analyzing the risks facing Antioch, did you at any time look at or study the trends in the party plan sector generally of the direct sales market?

A. Not that I can recall.

Q. Through plaintiffs' counsel or otherwise, did you have an opportunity to review any board of directors minutes or presentations from 2002 or 2003 addressing digital photography?

A. Not that I can recall that directly focused on digital photography.

Q. That's my question.

A. Yeah, I mean I reviewed other board minutes related to the transaction and related to the Deloitte & Touche projections, but not that related specifically to digital photography.

Q. Did you review any, to the best of your recollection, documents because I didn't see them in your Exhibit I that were either provided to you by plaintiffs' counsel or that you came

into possession otherwise that showed Antioch's strategic initiatives in regard to the emergence of digital photography?

A. I did see a couple of strategic plans. There was at least one and I want to say two strategic planning meetings, and I had minutes from those, but I don't recall any specific, in those documents I did see, I don't recall seeing any specific plan to address digital photography. There were bullet points that indicated the company had to address it. I didn't see any documents that said and here is how we propose to address digital photography.

Q. Was Mr. Mizen your sole source of information regarding the company's plans or lack of plans in light of the increasing use of digital cameras in the marketplace in or around 2002 and 2003?

A. As an individual, you know, I'd have to say yes. I only spoke to the three people. Wiser indicated, who of course joined the firm later, that he looked back and didn't see that the company had responded quickly and sufficiently to digital photography. But he's looking at that issue after the fact.

Q. And what's the problem with that? Hindsight bias or --

A. Oh, no. I just thought you would say but he wasn't there in 2003.

Q. Oh. Well, please try not to anticipate what I say. I might not be as good a lawyer as you think I am or --

A. Okay.

Q. -- ask the questions that you think I am. You probably shouldn't be doing that.

A. Okay. Well, it's not hindsight bias. It's just that his observations are all. I joined in 2005 but I analyzed the last five years when I joined and I saw that the company had not adequately addressed or adequately responded to the changes in technology.

But everything else I looked at was factual information. In other words, when you look through the company's annual reports, there's not a lot of, I don't recall any discussion about here's our plans for new products with regard to digital photography.

Q. That could just mean that the company traditionally didn't talk about their products in their annual reports.

A. That may be true.
Q. Right.
A. But there were also substantial files that I reviewed with regard to the current, each year, that went back several years, through 2003, that were the company's current brochures and advertising and product offerings, the information that they gave to the sales consultants. And I just didn't see the issue of digital photography created scrapbooking addressed in any of those product offerings.
Q. Would you have the expertise or the eye to recognize in marketing materials provided to consultants products or services that were driven by the increased use of digital photography in the marketplace?
A. Well, I may not be able to identify everyone. If they used some sort of trademark or code name, then that could be hidden. But if this was the issue in the industry that my research indicated, I guess what I would have expected is no ambiguity. In other words, I would have expected the company to say to its sales consultants, Great news, Here are our new digital photography friendly scrapbooking products.

Q. And that's based on what experience of yours in the scrapbooking business?
A. It's not scrapbooking. It's the experience I've had in frankly a couple of hundred industries, that when a company invents sliced bread they don't hide it, they promote it.
Q. And if I'm able to develop at trial and produce at trial documents indicating that, in fact, consultants were being trained to educate the end user on how to incorporate digital photography to scrapbooking, would those have been documents you would have liked to have seen in analyzing the impact of the risk as you saw it of digital photography on Creative Memories' business?
MR. GOTTO: Object to form, calls for speculation.
THE WITNESS: Well, sure. I'd like to see any additional documents, including those.
BY MR. SCHEIER:
Q. Thank you.
And would you agree that had you seen such documents, if I'm able to produce them at trial and get them into evidence, it would have

had an impact or you would have used it to further analyze the severity of the risk the company was facing in regard to digital photography?
MR. GOTTO: Same objection.
THE WITNESS: Well, I certainly would have considered it.
BY MR. SCHEIER:
Q. Okay.
A. I'd consider any evidence. I just can't tell you what impact it would have.
Q. One last category of evidence. Did the plaintiffs' lawyers give you or did you come across any interview notes from either Julie Williams of Duff & Phelps, Craig Jackson of Houlihan Lokey, or Terry Trimark of Houlihan Lokey of interviews with Mark Mizen and others in regard to digital technology as part of the due diligence process prior to the transaction?
A. Yeah, I saw a lot of due diligence files. I don't recall seeing those interview notes.
Q. You don't recall seeing those notes?
A. No, sir.
Q. Okay. So you don't know -- when you were sitting here in judgment of Duff & Phelps and

its analysis 12 years ago, you didn't have the benefit of seeing what Duff & Phelps is being told by company management during due diligence interviews about the company's plans to address the emergence of digital cameras and the growing popularity of digital cameras?
A. Well, what you're asking me is do you know what you don't know and the answer is no, I don't know what I didn't see.
What I did see didn't indicate that specifically Duff & Phelps, that's who we're talking about, considered the impact of digital photography either in their projections or in their discount analysis.
Q. By the way, when you conduct a due diligence investigation in an effort to prepare a valuation of an ESOP company or otherwise, do you incorporate interviews with company management into the due diligence that Willamette does or you, Robert Reilly, do?
A. Typically, yes.
Q. When you were discussing with the lawyers the opinions you were going to be providing and some of your conclusions, did you think to ask them about whether there were any

notes or evidence from what Duff was being told in due diligence about the company's plans as they related to the popularity of digital cameras in the marketplace?

MR. GOTTO: I'll have you just answer that "Yes" or "No," please.

THE WITNESS: Okay. Can I hear the question again?

MR. SCHEIER: Can you read it back, please, Donna?

THE REPORTER: "When you were discussing with the lawyers the opinions you were going to be providing and some of your conclusions, did you think to ask them about whether there were any notes or evidence from what Duff was being told in due diligence about the company's plans as they related to the popularity of digital cameras in the marketplace?"

THE WITNESS: I think the answer is yes. I understood that I had the entire Duff & Phelps workpaper file.

BY MR. SCHEIER:

Q. Understood. Thank you.

Focusing back on Paragraph 129. In

your conclusion that Antioch was facing significant industry risk factors as of the transaction date, you note rapid industry changes due to the advancement of the digital market. Then B is the need to reinvest in business operations in order to implement new technologies.

I didn't understand what you meant there.

A. All I'm trying to say there is to the extent that Antioch would respond to the digital transition, they would have to make investments to do that. They'll either have to make investments in R&D or investments in capital expenditures or both.

Q. And based on the information you were getting from the lawyers, the universe of information, is it your testimony that you didn't see any documents indicating that Creative Memories was investing both employee power and money in its efforts to develop services and products to meet the popularity and use of digital cameras?

A. No. What I'm saying is what I looked at is R&D expense in the projections compared to history, and it was flat or decreasing. I looked

at capital expenditures in the projections compared to history, and it was flat or decreasing.

I would have expected in the case of any company in any industry responding to a technological change that they would have increasing expenditures in selling expenses, increasing expenditures in R&D, and increasing expenditures in capital expenditures, and I just didn't see that.

Q. Did you look at any of Antioch's financial statements between the years of 1999 and 2002 to determine what the level of R&D was in those years?

A. Yes, sure.

Q. And did you then do any sort of deeper dive to determine what Antioch was devoting its R&D dollars to in those years to meet what was already then the emerging use of digital cameras?

A. No. I did not.

Q. Did you do any analysis, to the extent there was a line item for research and development in Antioch's projected financial statements, how much of that R&D was devoted to addressing emerging technologies?

A. I did not have that detail.

Q. So as you looked at the R&D line item, you didn't know to what issues Antioch was going to be devoting its R&D spend?

A. That is correct.

MR. SCHEIER: I'd like to take a short break.

MR. GOTTO: Okay. I'll see if lunch is here.

THE VIDEOGRAPHER: Off the record at 12:35 p.m.

(A lunch recess was taken, and said deposition continued as follows:)

THE VIDEOGRAPHER: This begins Disk Number 4. Back on the record at 1:12 p.m.

BY MR. SCHEIER:

Q. Robert, we just were addressing prior to the short break the portion of your opinion related to industry trends that you viewed as risks to the company that Duff did not take into account.

I want to move now to company specific trends that you identify and discuss in Paragraphs 100 to 111 of Exhibit 822.

One company trend that you focus on

is called productivity.
A. Yes.
Q. Prior to being asked to prepare this analysis in this particular case, had you ever been called upon to interpret the productivity metric in a party planning organization?
A. Not that I can recall.
Q. Let's look at Footnote 22, please, of your report. You note there specifically that you write, quote, "I understand that Antioch management considered the productivity metric to be a critical indicator of company health."
Did I read that correctly?
A. Yes.
Q. From whom or from what did you gain an understanding?
A. I don't recall specifically. I think that was just my reading of general management documents.
Q. Can you give me an example of any management document that said that, that was created at a time prior to the transaction?
A. I don't recall any document that used the term "company health." That was my term. It seemed to be a statistic that was obviously

calculated every month and seemed to be important. And that's all that I wanted to say. There's nothing magic about the term "company health."
Q. So you don't know how Antioch management in 2003 used or considered productivity, the productivity metric I should say?
A. Well, not specifically. As I say, they calculated it and commented on it in various monthly memos and in various annual meetings, they commented about both what the productivity was and what they intended it to be in the future and what they needed to do to get it from what it was to what they wanted it to be.
Q. Couple of questions. Did you read Asha Moran's testimony about how management used the productivity metric in the period prior to the transaction?
A. If I did, I don't recall that.
Q. All right. Did you ever review or gain an understanding of whether, in fact, the company used the productivity metric as a stand-alone indicator of anything much less company health?
A. I wouldn't say that I ever saw it

being used as a stand-alone indicator.
Q. The next question I have is in looking at the productivity metric for purposes of your report, did you ever bother to go back and look at how management's projection of productivity historically stacked up against the actual productivity performance of the consultants?
A. I don't believe I did that.
Q. Okay. Did you ever look historically to determine whether the productivity metric standing alone had any correlation to the company's, or I should say Creative Memories', sales performance?
A. I don't recall looking at that.
Q. I understand, Robert, if you can look real quick, I don't have any substantive questions about it, but at Table 1 on Page 30 of your report that's Exhibit 822.
I understood from your sources, the sources that you identify as the, the sources for the information contained in Table 1 -- sorry. That was very inarticulate. Let me start again.
I note that the caption under Table 1 identifies the sources from which you got the information that appears in your Table 1; is that

right?
A. Yes.
Q. The first source is WIS 00004. Do you see that, Robert?
A. Yes.
Q. Did you only have that page, to the best of your recollection, or did you have the benefit of the entire report of which Page 4 was only apart? Just based on your recollection.
A. I just don't recall without looking.
Q. What would you have to look at? Your workpapers?
A. Yes.
Q. You know, about that, did you provide your counsel with all of your workpapers to in turn produce to us in this case, to the best of your recollection?
A. Well, my understanding is that we did provide to the plaintiffs' counsel all of the workpapers that we retained as part of our final workpaper file.
Q. And when you talk to me about going back to look at your workpapers, that would be going back to look at information that you, in fact, turned over to the plaintiffs' lawyers to

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provide to us in discovery, as you understood it?
A. If it was a document that I relied upon, yes. I mean we received many, many, six, eight, or more, ten, bankers boxes of documents I didn't rely upon. So there could be documents in there that we still have but are not part of our actual engagement workpaper file that I could look at.
Q. I think I understand.
So whatever documents you relied upon and retained, you provided to counsel to turn over to us in the process of discovery?
A. Yes, sir.
Q. Okay. Thank you.
Did you, Robert, destroy any of your workpapers between the time that you, at any time before counsel approached you and asked you to provide them in response to my clients' document requests? E-mails aside for now. I'm talking about your substantive workpapers.
A. I don't believe so.
Q. And when you discuss your workpapers, are those documents that you store hard copy in a box or file cabinet somewhere in this office?
A. Yes. They're actually on two medium,

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but the one we ultimately save is a hard copy that we print out in manila file folders in bankers boxes and at the end of the engagement we'll send it to an off-site warehouse. But ultimately when the case is finished and when the report is finished --
Q. That's okay. I appreciate it.
So it's that universe of documents then that you don't recall destroying any and that you handed over to counsel to produce to us?
A. Yes.
Q. Other than the sales metrics in Table 1, the productivity metrics in Table 1, I believe that you derived your company trends information from your interviews with Mr. Mizen, Mr. Wiser, and Ms. Anderson; is that correct?
A. They gave me input, yes. Is that what you're asking?
Q. I think that's what I was asking.
I thought you had said that you considered those interviews in identifying company trends that GreatBanc or Duff & Phelps didn't adequately consider in its analysis.
A. Yes. I'd agree with that.
Q. Okay. And that's indicated in

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Paragraph 100, Subsection C; correct?
A. Yes, that's right.
Q. Was it Mr. Greenwald that put you in contact with Mr. Mizen?
A. Yes, it was.
Q. Was that several years ago already at this point, if memory serves?
A. Yes, that's correct.
Q. Have you spoken to Mr. Mizen at any time in the last year or so or in connection with preparing this report in the last several months?
A. Oh, no.
Q. So the last time that you recall speaking to Mr. Mizen back in the 2012 timeframe approximately?
A. I was going to say 2012, yes.
Q. And did you speak to him once or several times?
A. For Mizen, Mizen may have been twice, I want to say twice.
Q. And in crediting what Mr. Mizen was telling you, did you do anything to verify that he would have been part of the Antioch Company's strategic business planning at the board or the management level?

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A. Well, I had his, I believe I have his resume. I don't think I asked specifically if he attended board meetings.
Q. That wasn't my question. I was asking whether you made an inquiry to verify or to understand whether he was a part of the company's strategic business planning or had any input to the board of directors in regard to strategic and business planning?
A. I don't recall asking that.
Q. Did you talk to Mr. Mizen at all about his testimony that in his view the purchase price that the company paid to outside shareholders tendering shares at $850 was, to his mind, fair, a fair price for the shares?
A. No. I don't recall talking about the share price at all.
Q. You did credit several of Mr. Mizen's remarks about the company's projects and prospects with regard to the emergence of digital photography?
A. Yes.
Q. Would it have been an important piece of information for you to know in undertaking your financial analysis in Exhibit 22 that Mr. Mizen

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believed $850 was a fair price for the shares that he tendered along with my clients and other nonESOP shareholders in the December 2003 transaction?

A. No, I don't believe so.

Q. Why not?

A. Well, I don't recall that Mizen had any financial analysis or CPA or CFA or valuation or fairness opinion experience.

So he may have personally believed that the price was fair, he may have accepted the price, but I had no reason to believe that performing fairness opinions on a professional basis was part of his experience.

Q. And would it be your view the same if Mr. -- would your view be the same as to Mr. Mizen's ability to interpret sales projections and revenue projections, for example if you thought that they were reasonable or reliable, you have no reason to credit that sort of analysis on his part based on what you know about his background?

A. I think I'd agree with that, yes.

Q. You also spoke to -- let me take one more step back and ask another question, I'm

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sorry, before we leave Mizen.

In analyzing the reliability or credibility of what Mr. Mizen was telling you, did you take into account the fact that he engaged Mr. Greenwald and Mr. Dyer to be his counsel?

A. I don't believe I knew that.

Q. You also spoke to Rhonda Anderson; correct?

A. Yes.

Q. When you spoke to Rhonda Anderson, were you aware that she had engaged plaintiffs' counsel to represent her in this case?

A. No.

Q. Do you recall speaking to Ms. Anderson also back in 2012 around the same time you were speaking to Mr. Mizen?

A. Yes.

Q. Since that time have you spoken to Ms. Anderson?

A. No.

Q. Have you read Ms. Anderson's deposition testimony?

A. I did receive it, I skimmed through it, but I did not read it in detail.

Q. Did you read Mr. Mizen's deposition

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testimony?

A. I did read it, but, again, I didn't rely on it in any specific way.

Q. I noted that in your report, and I'll try to get it in a moment -- if you could please focus, Robert, on Paragraph 110. You there?

A. Yes.

Q. Great. Thanks. You'll note, well, I'll note and ask you to focus on, please, the last sentence where you I presume are relating Ms. Anderson's remark to you that sales consultants started to leave Antioch during 2003.

Do you see that?

A. Yes.

Q. Let's put the reasons aside for a moment.

What did you understand she was telling you when she told you that sales consultants started to leave Antioch during 2003?

A. Yes, and certainly that sentence, now that I read it, could be more descriptive. It's not to say that sales consultants had never left Antioch before but they were leaving at an increasing pace compared to previously and they were leaving for concerns that she thought she

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could not address as part of management.

Q. So I'm going to restate it, and please tell me if I'm wrong because I don't mean to misstate what you had said.

You understood Ms. Anderson to be telling you that consultants during 2003 were leaving the company or not serving as consultants any longer in numbers greater than the company's historical experience prior to 2003?

A. Yes, that the turnover rate or churn rate had increased.

Q. Okay. Do you recall whether there was any specific point in 2003 that that began to occur, according to Ms. Anderson?

A. I don't recall that she mentioned a specific time.

Q. And, Robert, did you do anything by way of reviewing the evidence in the case that you had possession of and access to to verify whether what Ms. Anderson was telling you was accurate?

A. I don't believe I did.

Q. Lastly, I understand with regard to interviews, you spoke to Richard Wiser and I also believe -- and this will be a compound question -- that that happened in 2012.

A. Yes.
Q. Since you spoke to Mr. Wiser in 2012, have you spoken to him since, to the best of your recollection?
A. No. I have not.
Q. Did you review Mr. Wiser's deposition testimony in this case that was taken after that time?
A. Yes, I did. Again, I didn't rely on it, but I did read through it quickly.
Q. Did you, Robert, have access to e-mails that Mr. Wiser authored during his time with the company in 2005, 2006, about ARIMA statistical modeling and its reliability?
A. I don't recall seeing that.
Q. Robert, I'm going to hand you what's been marked in a prior deposition Exhibit 653, and if you'd just take a look at that. (Document tendered to the witness.)
I only have a question in regard to the third page of the exhibit which is labeled Page 2 on the bottom, but feel free to peruse it so that you're comfortable with the context.
Robert, Exhibit 653, if you see on the first page, is an e-mail from Mr. Wiser to

Asha Moran and Jeff Grong and Barry Hoskins dated June 13, 2005.
Do you see that?
A. Yes, I do.
Q. And he notes there that he's attaching a forecast and analysis of our sales and sales forecast.
Do you see that's the first sentence of the e-mail to Asha?
A. Yes.
Q. And then if you look at the second page of the exhibit, please, there's a heading there "U.S. Gross Wholesale Forecast." And do you see just below that the first sentence of the following paragraph reads "A time series ARIMA model continues to project declining sales in 2005"?
A. Yes.
Q. If you then look over at the next page, there's a table where in June 2005 Mr. Wiser is projecting out sales for the 12 months 2006?
A. Yes.
Q. So about one to one and a half years out he's projecting sales.
Do you see that?

A. Yes.
Q. Now, if you'll look at the paragraph immediately below that, he writes "the ARIMA model that projects trends, seasonality, and cycles currently yields a 2006 forecast of $230 million, a 15 percent decline." He then writes "Since we have just finished May 2005, the ARIMA 2006 model is too far out in the future to be reliable."
Did you have any discussions with Mr. Wiser about his view that -- well, let me strike that.
Is that the first time you're seeing a statement like that by Mr. Wiser?
A. Yes, it is.
Q. Okay. You can put Exhibit 653 aside.
And I'm going to hand you now, Robert, what's --
MR. GREENWALD: Hey, Mike --
MR. SCHEIER: Yes, Gary.
MR. GREENWALD: Can you just tell me what exhibit number that was?
MR. SCHEIER: The one we just went over, Gary?
MR. GREENWALD: Yes.
MR. SCHEIER: It was 653.

MR. GREENWALD: Okay. Thank you.
MR. SCHEIER: You're welcome.
BY MR. SCHEIER:
Q. I'm now handing Robert an exhibit marked in a prior deposition as Exhibit 657. 657 is an e-mail from June 2005 from Mr. Wiser Ms. Moran, Mr. Hoskins, and Mr. Grong. It's dated June 30, 2005. (Document tendered to the witness.)
In the first paragraph he writes "As I look at U.S. sales trends, including initial May results and think about the planning cycle, I find it difficult to recommend a growth scenario until we see a turning point. U.S. sales through May project to about $273 million, wholesale in 2005 as compared to $295 million last year." Then he writes, quote, "While it is too far in the future to reasonably trust the projection methodology, 2006 projects to be below $250 million."
Did I read that paragraph correctly?
A. Yes.
Q. Other than the last e-mail we saw, is this also the first time that you're seeing

Mr. Wiser remark that the ARIMA projection methodology was not reliable to project out from 2006 sales in June 2005?

A. Yes. I have not seen this memo before.

(Deposition Exhibit 825 was marked for identification.)

BY MR. SCHEIER:

Q. Next, Robert, I'm handing you Exhibit 825. (Document tendered to the witness.)

Exhibit 825, Robert, is an e-mail now a month after the last one and two months after the first one we looked at just now dated July 5, 2005, from Mr. Wiser to Ms. Moran, subject: June sales.

If you look at the third paragraph -- and, again, I don't mean to be forcing you only to focus on what I want you to read. If you feel a need to read other paragraphs or other segments, please feel free to do so and let me know if you need the time. But the third paragraph begins "While I feel these forecasts are too low, they are picking up the downward trend very similarly. I can argue that the ARIMA model is reliable only for about six months through

2005. The sales response model has a trend variable which I do not like conceptually."

Again, you hadn't seen prior to this Mr. Wiser's view that the ARIMA model is reliable for only about six months out into the future?

A. I have not seen this memo before, no.

Q. Nor have you heard that being Mr. Wiser's view?

A. That is correct.

(Deposition Exhibit 826 was marked for identification.)

BY MR. SCHEIER:

Q. Robert, Exhibit 826 is another e-mail from Richard Wiser, this time to somebody named Bobby Cariber, dated November 1, 2005. I'll represent to you Bobby Cariber was an Antioch employee on that date. (Document tendered to the witness.)

In the second paragraph, Mr. Wiser is writing to Ms. Cariber "2006 becomes 188 million using the same model. It is not that reliable out that far but does give you our current direction."

Again, I'll represent to you that

the model Mr. Wiser is referring to here is ARIMA. I just want to confirm that you hadn't seen this e-mail before either or Mr. Wiser's articulation of the reliability of ARIMA going out in the future expressed as he has in this e-mail before?

A. No. I have not seen this e-mail before.

(Deposition Exhibit 827 was marked for identification.)

BY MR. SCHEIER:

Q. Thank you. Robert, here is an e-mail from Richard Wiser. I've marked it as Exhibit 827. It is from Richard Wiser to Nancy -- well, the top e-mail is from Richard Wiser to Nancy Blair dated August 3, 2005. (Document tendered to the witness.)

Had you read, to the best of your recollection, even at kind of a cursory level Nancy Blair's deposition in this case?

A. Yes, I did. Again, I didn't study it but I did read it, yes.

Q. Richard is forwarding to Nancy an e-mail he wrote earlier that day, even though you couldn't tell from the timestamp because I think there's a time zone issue, an e-mail he wrote

earlier in that date to Asha Moran, Barry Hoskins, and Jeff Grong. And if you look on the second page of the memo, on the third paragraph below the ARIMA projection above, Richard writes -- you'll see in that paragraph at the start he's using an ARIMA model.

Do you see that in the first sentence of the third paragraph under the graph?

A. Yes, I do.

Q. He notes in the very last sentence of that paragraph after a narrative explanation of what the graph is showing, "Just as a note, it is too far in the future to be reliable, but 2006 projects to be below $200 million."

That's similar to the message Mr. Wiser has been giving Ms. Moran and others in the last few e-mails we've seen about the unreliability of ARIMA going out much more than six months. Would you agree?

A. That seems to be his opinion, yes.

Q. The only thing that strikes me about this particular e-mail unlike the others, Robert, is that you produced this one.

I'm just wondering if this refreshes your recollection that you might have

seen Mr. Wiser's view before. I'm not implying anything other than it's easy to forget with all the documents you've seen. But after noticing the Bates stamp here that's coming from you, if it refreshes your recollection that you might have been aware of Mr. Wiser's view previously?

A. Well, this was certainly in my file. I don't recall reading that paragraph, and I don't recall this being his view.

I don't recall ever discussing his view about ARIMA. I mean that just never ever came up at all. Because at the time I spoke to Wiser, that was I believe a couple of years before FTI entered into the picture and there was any discussion of a sales forecast based upon a Box-Jenkins analysis.

Q. And just to confirm. Even though you produced this, understandably, you've either forgotten looking at it or just don't recall it being something you focused on when you received this document from the plaintiffs' lawyers?

A. Well, that's right. If I received this, I probably received this two or three years ago, again, long before the issue of sales forecasting entered into my part of the analysis.

Q. If you had known Mr. Wiser's view prior to your reliance on Mr. Buchanan's projections, would it raise a question in your mind of just the reliability of a 10-year projection of sales or revenues using ARIMA?

A. Well, it may have encouraged me to go back and want to talk to Wiser again, which I did. My recollection is I spoke to Anderson once and Wiser once, again, three years ago now, maybe more.

So if I had focused on this being his opinion, I think I would have asked him why he had this opinion. As I mentioned earlier, we had outperformed sales forecasts here.

Q. Sure, sure.

A. But when I seen the Box-Jenkins method used, it's pretty regularly used for long-term forecasting purposes.

My understanding is frankly it's more reliable for long-term purposes than it is for short-term purposes. I don't know that I'd ever want to rely upon Box-Jenkins or any time series regression model to project out sales for say the third month from now for any one particular month.

Q. So your view is diametrically opposed to Mr. Wiser's who thinks it is good for that purpose?

A. Exactly. My understanding has always been --

Q. And what's your experience with the Box-Jenkins projections? Because I thought earlier I had asked if you had seen that used in transactional context or in business context and you told me you don't know.

A. Well, I don't know when we receive it and when we don't, but I'm familiar with Box-Jenkins just as a general forecasting technique.

Q. When have you ever seen a client of yours use a Box-Jenkins forecasting technique?

A. I can't tell you when. I mean, again --

Q. Have you ever seen a client of yours use a Box-Jenkins forecasting technique for a period five to 10 years out of the projection date?

A. I just don't know if they've used it or not. My --

Q. Okay. Well, you just said to me that

you've always seen --

MR. GREENWALD: Mike, let the witness answer the question, for crying out loud. You're blocking him every time he starts to say something.

MR. SCHEIER: Gary Greenwald or Gary Gotto can defend this deposition. I'm not going to fight with the Garys.

MR. GREENWALD: Then Mr. Gotto should be saying it.

MR. SCHEIER: You know, Gary, I wish you all the best, as you know --

MR. GREENWALD: And I'll keep my mouth shut.

MR. SCHEIER: My understanding is you're not even supposed to be in the case, okay. I don't want to get into unnecessary discussions here. But we've made many, many accommodations to the plaintiffs' team based on the current situation.

I'd appreciate if you're going to make an appearance at this deposition to defend this witness, that you do so and you let me know you're substituting in for Mr. Gotto. Otherwise, I'd ask you to please

reserve your comments and keep them to yourself.

MR. GREENWALD: Well, I've told you that the witness has a right to answer a question, and you know that, and you don't have a right to cut him off.

So if Mr. Gotto's not going to make the objection, than I am. But I'm going to keep my mouth shut from here on in.

MR. SCHEIER: Thank you, Gary.

But I will tell you it's actually a pleasure hearing your voice and hearing that kind of the fight that you have, and I appreciate that, and so be well.

MR. GREENWALD: Thank you, Mike.

MR. SCHEIER: You can tell I have great respect for Gary and have worked with him for many years, and it is truly good to hear his voice, but go ahead.

MR. GREENWALD: We do like each other, believe it or not.

THE WITNESS: Well, I can't tell you what clients use ARIMA and what clients don't. I didn't, frankly didn't know until just now that Antioch used ARIMA in its own

internal analysis.

But I am familiar with it from the literature about business forecasting. And I don't perform Box-Jenkins analyses in our practice. We would subcontract that out to statisticians, someone else.

BY MR. SCHEIER:

Q. Have you subcontracted out to a statistician ever in any engagement you've been working on personally the project of forecasting sales or revenues using a Box-Jenkins methodology?

A. Not specifically.

Q. Well, I'm talking about specifically.

MR. GOTTO: Let him finish his answer.

THE WITNESS: Not specifically we haven't. But what we've done in other cases, as we did in this case, we didn't request ARIMA, we didn't request Box-Jenkins, we didn't request FTI. We went to counsel and said you want us, you want us to perform a valuation separately from Duff & Phelps, separately from Deloitte & Touche. I can't do that without a forecast of, a projection of Antioch financial statements

that's separate from Duff & Phelps and separate from Deloitte & Touche. We can't do that. You need, Counsel, you need to give us a set of projections. And counsel then located FTI who decided to use Box-Jenkins.

So I didn't request a Box-Jenkins analysis. But I've made that request before in other cases.

BY MR. SCHEIER:

Q. What request? To counsel to go out and procure projections?

A. Exactly.

Q. Do you recall any case, and now you must be talking about litigation if you're referring to counsel, where making that request of counsel the work product you got back was sales or revenue projections using an ARIMA or Box-Jenkins approach?

A. Not that I'm aware of because, again, in the other cases, I can't think of an exception, what we get back is a set of financial statements that go out for five or ten years.

Q. Well, in this case did you know that you were working with financial projections that

were developed using an ARIMA or Box-Jenkins methodology?

A. Well, we didn't receive financial projections. We only received revenue projections.

Q. Were you aware that those revenue projections were created using an ARIMA or Box-Jenkins methodology?

A. Yes.

Q. Okay. Now, earlier on what prompted this part of the discussion was your remark that you've always seen Box-Jenkins or ARIMA used to project out on a 10-year period.

A. Yes.

Q. The question I didn't get answered was can you name for me each and every instance where you have either been advisor on a transaction or advisor to a company or expert witness in a litigation where the ARIMA or Box-Jenkins approach was used to project out sales or revenues over a 10-year period?

A. I can't give you -- I don't know that that's ever happened before.

Q. Okay. Thank you.

A. I wasn't talking about previous cases.

I was talking about the literature with regard to business forecasting.
Q. What literature are you referring to?
A. I can't tell you. Books.
Q. Even a one?
A. Not a one.
Q. Okay. Thank you.
Now, as I understand it, we've covered the industry trends that you believe Duff didn't adequately take into account. We've covered the company trends that you don't believe Duff took into account. And the last, I believe the last pieces of information that you in your report state that Duff didn't adequately take into account were the two Deloitte projections. Is that a fair summary?
A. Yes. I can agree with that.
Q. Okay. Now, as I understand it, Robert, Mr. Greenwald had provided you with Deloitte's October 2, 2003 and December 2, 2003 models. Is that how you got ahold of them?
A. Yes.
Q. Do you recall when he gave them to you?
A. No, I don't, but it was fairly

recently. In other words, it was in the 2014, 2015 timeframe, not in our first work, which was 2009 through 2012. And then there was about a two-year hiatus when we did nothing.
Q. After that two-year hiatus when you received the Deloitte projections from Mr. Greenwald and reviewed them, did they change any of the damages calculations numerically that you had previously prepared in the 2012 timeframe?
A. Not conceptually. But now there were two different scenarios that I didn't have before. Before I had the, just the Duff & Phelps scenario, period. That was my only scenario.
Q. Oh, you didn't have FTI at that time either?
A. I didn't have FTI until 2015.
Q. I understand. Okay. Thank you.
If I'm remembering right, Robert, and I might have a document to show you if you don't remember, Gary Greenwald had sent you more than just the two Deloitte models that are labeled "Big Downside" from October 2, 2003 and "Downside" from December 2, 2003; is that right?
A. Yes. There were a series of projections.

Q. Yes. In fact, Deloitte had run approximately 25 different series of projections during 2003. Is that your recollection based on materials you saw working with Mr. Greenwald?
A. That sounds about right.
Q. Other than the two models that you've cherrypicked to use in your report, the big downside and the downside, did you review any of Deloitte's other models?
MR. GOTTO: Object to form, characterization.
THE WITNESS: Yes, I did.
BY MR. SCHEIER:
Q. And is there any reason you didn't rely on any of those but instead chose the two labeled "Big Downside" and "Downside"?
A. No. I'm really prepared to work with any of their models, any of their projections.
Q. Did you work with the big downside and the downside at Mr. Greenwald's direction?
A. No.
Q. So why did you choose those two and not any of the others that he provided you with?
A. Well, I could have selected any of them. In fact, I did analyze in some detail the

upside models. There were two upside models.
I believed at that point you, not knowing you yet, but opposing counsel that I would meet, would then cheer for the use of the upside models. But the argument then, the battleground would be the discount rate. Why I'm indifferent about the models to use is I would select a discount rate commensurate with the achievability of the projections.
So I looked at the upside models and thought well, I can use these but I'm going to be using a 25 or 30 percent discount rate and I'm going to have to add a 15 percent company specific risk and then frankly I'll have a lot of cross examination about that.
Q. I see. And that's of course something you want to avoid.
A. Well, and the reason for that is, in full disclosure, as we've learned this morning, that there is no specific formula or equation or model that quantifies the company specific risk.
So I felt more comfortable using downward bias -- and "bias" doesn't mean deliberately bias, it just means downward sloping -- financial projections and a discount

rate that's easy to explain and easy to justify and frankly consistent with Duff & Phelps as opposed to using upward bias projections and then have to justify a discount rate consistent with those projections.

Q. Fair enough. Actually I am not sitting here as a cheerleader for any upside projections, nor am I a cheerleader for downside projections.

But you've mentioned four out of 25 models. Many of those models were management's expected performance, what has been known you've probably seen evidence in the case as management's base case projections.

So I just wanted -- I don't have a question. I just wanted you to know that I'm not a cheerleader for the two upside models. That's certainly not what I was getting at. I just wanted to be sure that you had available to you management's base case projections modeled by Deloitte and then you mentioned you saw two upside and you've chosen to use two downside.

A. Right. And I did look. I mean I know that's not your question, but I did look at the base case models which were not -- and, again, I

don't have it front of me -- but my recollection is they're not fundamentally inconsistent with the Duff & Phelps projections. I mean obviously there are some differences, but they're in the same ballpark. And I believed well, if I used those models at an 18 percent discount rate, I'm going to get to about my adjusted Duff & Phelps conclusion, I wanted to pick something different so I could actually say here's a range of different ways of looking at this problem. In some of these ways I leave the projections alone, which I would do with the base case projections and adjust the discount rate. And some of these analyses I'm going to leave the discount rate alone and use the more conservative projections.

Q. Now, you were aware as you were doing your DCFs, discount cash flow analysis to the extent we have to play this video in court, I think commonly discount cash flow is known as a DCF; is that right?

A. Yes.

Q. So when you chose to run DCFs using the two Deloitte models labeled "Big Downside" and "Downside," were you aware of the reasons that management prepared downside projections for

Deloitte to run through models?

A. My understanding was that the reasons were consistent with the reasons -- when we're acting as Duff & Phelps, we often ask for downside projections. We want to see what could potentially go wrong. If something goes wrong with our product, with the competition, with the industry, with the company, what's the downside risk.

And that's what we -- and when we get that, we typically also get most likely case and an upward bias case. And we analyze all three of those at different discount rates, and you should get to about the same answer more or less.

Q. And did you understand that, in fact, Antioch's management had prepared upside case, base case, and two downside cases at least?

A. Yes. And I have all of those.

Q. And you don't dispute that the reason management prepared those was not as a replacement base case but instead as I think what you called a scenario analysis to test cash flows should the company's performance fall in one case below and the other case far below what management expected performance to be.

A. That is correct.

Q. Okay. So if I understood part of what you said properly, it's basically that your valuation is basically, I guess is derived from your ability to always manipulate a discount rate.

So you could have used the upside but would have applied a larger discount rate. So instead you relied upon the downside to run your DCF with a lower discount rate to avoid any argument with me that might arise as to why you chose such a large discount rate for the upside?

A. Well, I'd change two things. One is it's not that analysts manipulate the discount rate. There is a discount rate -- a lot of analysts, and frankly some judges, make the mistake of thinking there's one discount rate for a company and that can be calculated independently of the projections.

There's really -- the discount rate relates to the projections, not to the company. So if there are aggressive projections that are risky, you have a risky discount rate. If there are base case projections, you have a base case discount rate. If there are downward bias projections, you'd have a lower discount rate.

I believe it was easier to explain and justify using the downward bias projections and not adjusting the discount rate than having to explain an adjustment to the discount rate.

I'm not opposed to using base case projections. For example, we know that BVI did that the year before in their ESOP valuation and we know that Prairie did that the year after. We know that the year before BVI add the 2 percent company risk factor. Had they had a much higher discount rate than Duff & Phelps did.

The year after, which is only two weeks after, it's only two weeks after, Prairie adds a 6 point company specific risk premium higher than my company specific risk premium and analyzes essentially the same projections that Duff & Phelps uses, and I'm perfectly willing to do that. I'm perfectly willing to base my analysis on base case scenarios as long as the analyst, whether it's myself or Duff & Phelps or Prairie, uses a discount rate that recognizes the risk in the base case scenario.

Q. Okay. And you just in this case chose not to do that. Instead you glommed onto the two big downsides and used a lower discount rate.

A. Well, I wouldn't say that because one of my scenarios, don't forget, is the base case. Duff & Phelps is the base case scenario.

Q. And to achieve the valuation that you did, you needed to apply to the WAC the 5 percent company specific risk premium; right?

MR. GOTTO: Object to form.

THE WITNESS: Well, again, it's not to the WAC. It's part of the WAC.

BY MR. SCHEIER:

Q. You incorporate it into the WAC in that model to Duff's projections, if I'm remembering right, the company specific risk premium?

A. Of 5 percent, exactly as Prairie does two weeks later when they add a 6 percent company specific risk premium and applies that risk premium and they use a discount rate of I believe 18 or 19 percent to, they apply that discount rate to effectively the same projections that Duff & Phelps did.

And, of course, we know that the company certainly accepted the Prairie valuation and used and implemented repurchase transactions for a year based on the Prairie valuation. So...

Q. And that Prairie valuation using a company specific risk -- well, is it fair to say that the higher the company specific risk premium the lower the valuation?

A. If the projection stays the same, yes.

Q. If the projection stays the same, right. Got it. All right. I think I understood what you're telling me.

I just want to be clear that you and I don't have a problem, as you know, at trial. You don't dispute that the board of directors asked management to prepare downside scenarios in conjunction with the two meetings where the board was going to consider the transaction so that the board could understand in a future where performance is less than expected that the company could still withstand its obligations based on cash flows, lower cash flows?

A. Oh, I would agree with that characterization. That's a downward bias projection. And I applied what I believed to be a downward bias discount rate to that. And I think that gets you to the right conclusion.

What I would say is, and this is maybe the one thing that was bothering me, if

that's the right word, about Duff & Phelps, we have, as you know, been involved over the last, well, since 1981, I've been involved with a lot of ESOP transactions, not that many updates anymore, but a lot of ESOP transactions. And if there are three projections or 25 projections that management gives to me, one that I really want to focus on, I'm not going to say I use it exclusively, but if I'm working for the trustee who's worried about the ESOP not overpaying, I want to analyze the heck out of that downside scenario.

Q. And if you didn't get a down -- well, have you ever worked for a trustee who's operating independently of the board and of any sort of other fiduciary within the company? In other words, a nondirected trustee it's called.

A. Oh, yeah, sure.

Q. And in those cases when you're working, when you're the financial advisor -- which I presume you have been to a nondirector trustee. Yes? Have you?

A. Yes.

Q. Do you here at Willamette when you're running those engagements prepare your own set of

downside scenarios or analysis scenarios based on company's base case projections that they give you?
A. I don't recall that I've ever done that. I mean I would say I consistently, and I think my colleagues consistently, go back to management.
Now, when you say do we project. We may actually put it into Excel. We certainly put it into our report, but we're going to go back to management and say okay, you gave us the base case, now what inputs would you give us in order to come up with a downside scenario and an upside scenario.
Q. And would you say it's also customary at times for a financial advisor to an independent trustee who's supposedly working independent of the company to do its own independent analysis of what a downside can look like based on its own understandings of the risks and mitigating factors to those risks that it perceives based on its due diligence?
MR. GOTTO: Object to form.
THE WITNESS: I won't say I've never seen that. I don't think we've ever

done that. I would be reluctant to do that, totally independently of the company because if something goes wrong, if it turns into an Antioch and people are suing each other right and left, what you don't want to have as the financial advisor are the types of question you are very legitimately asking me, for how many years have you managed a scrapbooking company, I've never managed a scrapbooking company, how many scrapbooking companies have you bought or sold, I've never done that, how many do you own, I've never done that, well, why are you making projections of a scrapbooking company.
BY MR. SCHEIER:
Q. Yeah.
A. I want to be able to say I didn't. Management, they gave me the variables. I may have plugged it into Excel, I may have run the final numbers, but the inputs came from management. In fact, they do run scrapbooking companies. That's why I'm relying on them.
Q. Sure. Because management has a lot more information, for example, than you would have and they understand what their expected case is,

what their downside case is, and what their upside case is; correct? Is that the concept behind the statement you just made?
A. Yes, sir.
Q. Okay. Now, you are aware, aren't you, that Duff, in fact, ran downside scenarios?
A. Yes. I did see that, not within the adjusted discount rate.
Q. No, no. I'm asking you -- I had thought -- I wasn't sure if you were aware that Duff, in fact, did run downside scenarios either on a management downside or on their own projected downside; right?
A. Yes. I did see that.
Q. I thought in your report you state that they did not do so?
A. Oh, if I did, I didn't mean to say that.
What I would say is my recollection is they just used one discount rate. They didn't adjust a discount rate to the scenarios.
Q. Okay. They did not adjust a discount rate but they adjusted the projections which would have an impact on reducing value or reducing cash flows under those DCF models; right?

A. Yes, but --
Q. That's what you understood.
A. Yes, but you can't adjust one without the other. You have to match the discount rate with the projections is what I'm saying. And I don't believe they did that.
Q. Well, you're using the same discount rate when you look at both of the Deloitte projections I thought.
A. Well, yes, because I think my 13 percent I think is the appropriate discount rate for a downward set of projections.
Q. Yes. And you would not alter that in a downward set of projections similar to the fact that Duff didn't alter that discount rate in their downward set of projections; correct?
A. Well, that's because they're starting with the wrong discount rate. They're starting with a discount rate that they believe is appropriate to a base case projection and then they're applying that discount rate to a downward projection.
What they should have done -- I'm not saying I would agree with their numbers -- they should have applied 13 percent to the base

case and maybe 8 percent to the downward case. In other words --

Q. But if they would have stuck with 13 percent on, like you have done on two different downward cases, they would have ended up with a lower valuation and a worse performance than had they done as you suggested which is using 8 percent discount rate on the downside projections; right?

A. Mathematically that's correct. Their analysis is not right, but I agree with your conclusion.

MR. SCHEIER: Okay. Let's take a short break.

MR. GOTTO: Sure.

THE VIDEOGRAPHER: Off the record at 2:09 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: This begins Disk Number 5. Back on the record at 2:27 p.m.

BY MR. SCHEIER:

Q. Hi, Robert. Can you please turn to Paragraph 155.

A. Yes.

Q. In that paragraph am I right in

understanding that you did not use the comparable company valuation analysis as a check against or to compare your DCF analyses?

A. That is correct.

Q. And for the reasons you state in that paragraph?

A. Yes, sir.

Q. Now, what about Antioch's financial risk profile that you deemed is unique to Antioch and you couldn't find a single other company that had a similar financial risk profile in and around 2003?

A. Simply, this is based upon the assumption that future results of operations are downward trending.

So if you look at the companies that Duff & Phelps selected as guideline companies, all of which I selected and used to come up with components of my DCF analysis, so my beta coefficient, my debt equity mix, are based on the same guideline companies that Duff & Phelps used. So I don't have any issue with those companies.

If you look at security analyst projections, those companies are all projected to

have increasing revenue profitability, and cash flow. If you believe the four nonDuff & Phelps projections, there are decreasing revenues, profitability, and cash flow with regard to Antioch. Therefore, Antioch would be different than the Duff & Phelps selected companies.

Q. Okay. Maybe I'm probably not understanding. It seems to me, and I'm probably wrong, that you're in a sense kind of putting the cart before the horse.

Don't you work through your DCF analysis, and if that's using downward trends in sales so be it. You ultimately apply that to a method that gets you a value for the company; correct?

A. Yes, that is correct.

Q. Why then wouldn't you look at several comparable companies regardless of how their revenues and sales are projected to move going forward as a check to see whether or not, in fact, the projections you're using and your ultimate valuation result is correct?

A. Well, because their pricing multiples then really would not be applicable. If you had two sets of companies in the exact same industry

and you had five public companies that had expected increased revenue, profitability, and cash flow and you had five identical companies, otherwise identical companies, except decreasing revenue, profitability, and cash flow, the pricing multiples from my second group are going to be a lot lower than the pricing multiples from my first group.

So if I applied these multiples, and these multiples are the Duff & Phelps guideline companies, if I applied these multiples to the subject company then I'm going to overstate the value of the subject company.

Q. But what I'm not getting is that the declining revenues and sales projections you're talking about are either downside projections or FTI's projections. What Duff had before it was a set of management projections, management who knew the business, who understood work in progress, who understood future prospects, and used the base case to determine comparable companies.

Why, Robert, wouldn't you use the base case assumption of increasing revenues or Duff's assumption of increasing revenues, though not at the level of management's projections, to

test where you ultimately came out on value?
A. Well, I see what you're saying. And you could do that. You could use the same guideline companies that Duff & Phelps used.
The difference is, again, and it's just another area of controversy, that I don't think would really make the analysis any more supported or unsupported because it's controversial to this analysis. You take the Duff & Phelps guideline companies, what they do is they extract -- they actually don't price Antioch based on those companies, as you know. They price Antioch 100 percent based upon a DCF.
They take their DCF conclusion, compare that to the financial fundamentals of Antioch, come up with pricing multiples, look at the guideline companies and say oh, we're in that range so the guideline companies support.
Based upon my value, I'd come up with pricing multiples, I would look at the same guideline companies and say I'm at the very bottom of that range. I think that's fine because I think my company has a lot more risk than those companies. Therefore, I think I should be at the bottom of the range. And then the controversy

would be well, why are you at the bottom of the range, why aren't you at the middle of the range where Duff & Phelps is? And we still get back to well, I think those companies, the guideline companies, are bigger, better capitalized, are responding to their industry risks, technological changes, better and faster than Antioch is going to be. And, therefore, since Antioch is, in my opinion based on my analysis that you can agree or disagree with, I think they're in a riskier position, I would expect their multiples to be lower than the average guideline company multiples.
Q. And did you run a risk analysis for each of the guideline companies before making your determination that the risk profiles were incompatible with the Antioch Company's risk profiles?
In other words, for example, did you look at any of those guideline companies and analyze how they were reacting to technological, the same sort of technological developments that were facing the Antioch Company?
A. We can argue about whether I did or not. I'll tell you what I did do. I did in

detail, I spent a lot of time reading their 10-Ks, annual reports, security analyst reports. I read a lot about those companies, and I concluded they were just in a better position than Antioch was.
Q. Did you produce any of those reports that you read analyzing the comparable companies to your lawyers to in turn produce to us so that I could see that in your workpapers?
A. No. I think we still have it if you want it, but I didn't produce it.
Q. Do you have any recollection of what the comparable companies or how many of Duff's comparable companies you analyzed by looking at their 10-Ks?
A. All of them. I didn't do anything other than look at the Duff companies. I didn't independently select companies.
MR. SCHEIER: Gary, we can write a letter, but to the extent if you recall if you can run that through with Mr. Reilly afterwards and produce those to us if you have no objection to their production and I'd appreciate it if you'd do so.
MR. GOTTO: Okay.

BY MR. SCHEIER:
Q. Did you look at any of Houlihan Lokey's valuation work on behalf of the tendering shareholders?
A. I did read through it. I didn't study it, you know. Our job was to study Duff & Phelps, not Houlihan Lokey. But I did have the, and do have, the Houlihan Lokey file. Again, I don't think I copied that because we simply didn't rely upon it at all.
Q. Can you identify for me any document or testimony in this record that supports your view, which I think is a lone-wolf view, that the projections management provided to the advisors in the case were unsupportable?
MR. GOTTO: Object to form.
THE WITNESS: I can't think of any as I'm sitting here.
BY MR. SCHEIER:
Q. I'd like to move on to your second flaw I think you call it; is that right?
A. Yes.
Q. And then the distinction between, what distinguishes the second flaw from the first flaw is -- actually, you see, Robert, when I say the

word "flaw," it's kind of like a New Yorker's way of saying "floor," right.
But all kidding aside because this is serious stuff. Your second flaw is your effort to value Antioch on a per share basis post transaction; correct?
A. Effectively. It's the consideration of the put price protection and the repurchase obligation.
Q. And in your view that justified a -- well, let me take a step back.
I think we're saying the same thing. When you were valuing the company on an enterprise value and on a per share basis post transaction, you felt that certain attributes of the put price protection agreement impacted value and you wanted to test that through an analysis.
A. That is correct.
Q. If I understand it right, probably the most material factor that you took into account in valuing the shares post transaction that Duff did not, at least sufficiently in your view, was the projected repurchase obligation; is that correct?
A. Yes.
Q. And just a few initial questions so I

kind of understand what's going on here between your report and Weinstock. So I'm not intending anything other than just to try to understand your general professional background.
You don't hold yourself out as an expert at forecasting an ESOP company's repurchase obligation; correct?
A. No. I think that's an actuary's job, and we're not actuaries.
Q. And you personally don't have or wouldn't hold yourself out as having the expertise sufficient to run a repurchase obligation study for an ESOP company?
A. That's right. We specifically do not do that.
Q. And you rely on Mr. Weinstock's repurchase obligation studies for purposes of your post transaction stock valuation; right?
A. Yes.
Q. Do I understand correctly, Robert, that in really kind of the simplest terms you took Mr. Weinstock's repurchase obligation study using the retirement age assumptions of 50 and 55 and his six assumptions regarding stock price appreciation and turnover rates, basically

averaged them, discounted them to present value, and came to a conclusion that Duff underprojected the company's repurchase obligation by about $80 million?
A. Almost correct. The only clarification is Weinstock actually has nine assumptions instead of six.
Q. Maybe my six is an upsidedown nine.
A. Well, that could be.
Q. Okay.
A. I would say I really wouldn't blame the Duff & Phelps, which is the same as the Deloitte & Touche future ESOP benefit expense on either Duff & Phelps or Deloitte & Touche. I understand both of those professional firms receive that projection from management. So management tells them basically we've been repurchasing about, whatever it was, 20,000 shares per year historically, we'll repurchase that or less going forward, whatever the number was. I think it was less than that.
Q. Your point is that whatever information Duff had, it led to an underprojection, the use of an underprojection in their post transaction valuation analysis.

A. That's right. An underprojection of the --
Q. Repurchase obligation?
A. -- cash flow outflow required to fund the repurchase obligations.
Q. Okay. Gotcha.
Now, one thing -- that was a little bit of a digression. I appreciate the explanation. When I accurately stated what you did with Weinstock's study other than I thought it was six assumptions, you corrected me with nine, your analysis that I described, and you said I generally described accurately, is found in your Exhibit 6A; is that correct?
A. I believe that's correct. I'll double check.
Q. Yeah, if you would double check I'd sure appreciate it so I know that that is in fact correct.
A. That's right. The summary is in 6A.
Q. Okay. Very good. Thank you.
And then is it fair to say that your valuation analysis and conclusion regarding the second flaw is in your Exhibit 21?
A. That is correct.

Q. Richard, engagements that -- well, strike that.
Did you and Mr. Weinstock jointly choose the assumptions that he used for his repurchase obligation study?
A. No. I would say that ultimately he selected -- I can't tell you if he had -- I'm sure he had correspondence with counsel. I don't know if he had instructions from counsel. But I would say ultimately Weinstock selected all of the assumptions early on when he was first retained by counsel. I think at one point we may have suggested different scenarios just to get the ball rolling, just to see what type of output he would provide to us.
But in terms of ultimately his analysis, his assumptions with regard to growth rates and stock value and retirement rates and employee turnover rates and retirement ages and so forth, those certainly didn't come from us. I believe they came from Weinstock.
Q. Do you recall ever directing or any of your staff directing Mr. Weinstock to run repurchase obligation studies with turnover rates higher than he had been using in early iterations

of his study?
A. I don't recall that. I do recall there was some memos back and forth from my first manager on this case, who has since left, suggesting different alternative assumptions. I don't remember if they were higher or lower.
I don't know at that point in time we had ever even received Weinstock's analysis because I recall asking Corey Chiovari, C-H-I-O-V-A-R-I, who was the first manager who worked on the case with me in '9 through '11, 2009 through 2011, I suggested to Corey to suggest some alternatives, to say Weinstock we'd like the output in this format. But we never actually got the output in that format. We got the output in Weinstock's format.
And ultimately he selected variables that we didn't recommend. But I think we did recommend here are the types of variables that you should be thinking about or we'd like to see just to see what type of output you're going to give to us.
Q. You don't remember directing Corey to request that Richard Weinstock run repurchase obligation models using a 50 percent turnover rate

for Antioch employees?
A. I don't remember that. Corey may have sent Weinstock an e-mail. I don't remember asking Corey to do that. But, again, I would say, I would interpret -- we never gave Weinstock an instruction that we're going to rely upon that. It would have been, you know, so far Weinstock, we've never seen anything from you, you know, let's just start the information flow going back and forth, run any variables you want, you know, are you going to actually give us a number in a format that we can convert into a value adjustment.
Q. Just to the best of your recollection, you don't recall directing Corey or you yourself contacting Richard Weinstock to specifically ask him to run models with a higher turnover rate than the models he had previously been providing to you?
A. Not that I can recall, no.
Q. Can we turn our attention to Exhibit 21, please.
A. I have that.
Q. Okay. Do you see the line item "Present value of repurchase obligation

liability"? It's marked as E.
A. Yes.
Q. I just wanted, E, it's pretty self-explanatory, but just so the record is clear, that number for the repurchase obligation liability of $80 million or so is derived from your Exhibit 6A?
A. Exactly. It should be the same number.
Q. Okay. And is it also true that in your calculation on Exhibit 21 an important assumption you make is that over the 10-year repurchase obligation study period the Antioch Company will be redeeming shares put to it by its employees above fair market value?
A. I don't think that's the case. I mean I do -- I thought you were going to stop at is the assumption that the sponsor company is going to redeem the stock and that that is the assumption.
I don't believe the assumption is that they are going to redeem the stock at above fair market value -- well, let me see. Now that I'm thinking about that question, the answer probably is yes because we assume, I assume and Weinstock assumes, that the company will redeem

the stock at the Duff & Phelps value increased at, what does he use, 0 percent, 3 percent, and 10 percent.

I believe that the Duff & Phelps value is above fair market value. So now that I think about it, I guess the answer is yes. I'm assuming that the company will redeem the stock at 850 plus as opposed to 550 plus.

Q. And the reason why that assumption is critical, Exhibit 21, is because if the company or the assumption was the company was going to be redeeming shares going forward on a fair market value basis, that would be the equivalent of a capital transaction, and that would have no impact on value; correct, all other things being equal?

A. Not entirely. I think it's always a capital, redemption is always a capital transaction.

The difference is -- and if this gets too complicated just cut me off. The difference is for any individual redemption, if the individual redemption or even for an entire year of redemptions, if the redemptions occur at fair market value, then there should be no impact on the price of the company stock for any

individual or group of redemptions.

On the other hand, you can take a projection of 10 year redemptions going forward, even if those are at fair market value on any given redemption, that's not going to decrease the value of the stock. We as valuation, ESOP valuation analysts, still consider that and would still potentially adjust the pricing multiple, the discount rate, the projection, because while that may not affect the value of the stock per share it could affect the liquidity of the company. In other words, that company could run out of cash while still paying fair market value just because it runs out of cash.

So the whole repurchase obligation could affect the company value while the redemption of any block of stock would not affect the stock value.

Q. I don't think it was too complicated. It's just I have a simple mind. So let me try to understand.

When I said "all things being equal," what I meant is a company over a 10-year projection period is assumed to be redeeming shares at fair market value. All things being

equal includes the ability to stand by and fund those redemptions as time proceeds.

A. Sure.

Q. So my question is assuming that the company has sufficient cash flows to cover the redemptions, if the redemptions are being made at fair market value it should not impact the value of the company, correct, with the valuation?

A. I agree entirely with that caveat, as long as you don't have the liquidity problem, then as long as you redeem at fair market value it's not going to hurt the per share price.

Q. In any event, we now agree that there -- is the Exhibit 121 is based on an assumption that the company for the 10-year period going forward is going to be redeeming employee puts at a per share value in excess of fair market value; correct?

A. Yes, sir.

Q. Did you also take into account the general assumption make an assumption about the amount above fair market value that the company would be redeeming shares for each of the 10 years of the study period?

A. Not specifically, no.

Q. How about generally?

A. Well, I didn't. Now, I would think that the Weinstock model may do that because it has, it assumes share prices are growing, so, therefore, the delta is going to be growing at 0 percent, 3 percent, and 10 percent. But I didn't give him that input.

Q. As I understand it, those share appreciation assumptions in the Weinstock analysis is based on a base price of $840.26. Is that your understanding?

A. I think that's right. Whatever the Duff & Phelps post transaction value was which I think was 840 and change.

Q. Right, okay. So to properly do -- well, okay. So then let's just, let's follow this a little bit further.

Wouldn't the only portion of the redemption price that impacts value in the scenario that we're describing be that amount paid to departing employees in excess of fair market value?

In other words, the amount of the share, the price per share the company is paying the employee up to fair market value, has no

impact on valuation. The impact begins to occur for each dollar above fair market value that the company is paying. And the impact I'm referring to is impact on a valuation analysis.

A. Impact on a per share value I would agree with that.

Q. Then do you need to revise your $80 million figure here in this line? In other words, is it incorrect in overstating the actual valuation impact on the company post transaction because it takes into account the entire repurchase obligation as opposed to only that portion of the repurchase obligation that is above fair market value?

A. No. I don't think so. And the difference that I'm trying to distinguish is a difference between a per share value and a total value.

Ignore the per share value for a moment. If you have two companies, one of which projects out say $7 million a year of repurchase expense, repurchase expenditures. It's technically not an expense, but an expenditure. And another company it projects out $70 million a year of repurchase expenditures.

So this company is going to have $7 million out the door, this company is going to have $70 million out the door. The second company is going to be worth a lot less than the first company. So the company value will go down.

Now, the reconciling factor, why we can still agree with each other is, the first company is going to have a lot more shares outstanding than the second company is going to have. So when you divide both values by the then number of shares outstanding, the share price will be the same between the two companies. The equity value in total will be the difference between those two companies.

What I'm saying is the equity value in my revised company with the Weinstock analysis is going to be $80 million lower.

So I don't think your -- the question I would ask is not should you subtract the $80 million. I think the answer is yes, of course you should. The question I would have asked is should you divide it by 222,000 shares.

Q. Well, we're getting there, we're getting there.

A. Okay. The answer is I still think yes

because on day one we still have 222,000 shares outstanding.

Q. Well, you haven't heard the question I'm going to ask because it's going to be a really good question.

A. I'm sure it will be.

Q. But we're not there yet because I don't quite get what you're telling me about the 80 million.

I understand your own writings and in general I don't think your writings are the Bible, I think you follow an orthodox valuation approach, is that, all things being equal, when a company, an ESOP company, redeems shares put to it by its retiring or departing employees at fair market value, it has no or no material valuation impact on the company.

A. No, no, no. That's not what I said. No material impact per share. Not on the company. Per share.

Q. Fair enough.

A. But that's a big difference.

Q. Well, you know, it may or may not be. I think in this case the per share -- let's stick with the per share value at this point.

A per share value -- you'll agree with me that my statement is correct if I revise it to state that company's redemption of shares at fair market value, all else being equal, has no impact on a per share valuation for the company.

A. That's correct.

Q. Okay. Your $80 million figure here, a portion of it, captures the fair market value of the shares. So up to that point the per share value should not be impacted. The valuation impact occurs, correct, Robert, for each dollar above fair market value that the company is paying. At that point orthodox or traditional valuation theory would almost uniformly say has an impact on the valuation analysis. For every dollar above fair market value it has a corresponding reduction in, it causes a corresponding reduction at some ratio of company per share value; correct?

MR. GOTTO: Object to form.

THE WITNESS: I think we agree that moving around redemptions should not change the per share value.

BY MR. SCHEIER:

Q. Then I probably asked a bad question,

and that justifies Gary's objection.
Here's what I'm saying: If paying fair market value has no impact on the per share value of an ESOP company, then to my mind your $80 million figure has to take that into account and needs to be reduced by what the fair market value of those shares are because up to that dollar there should be no negative impact on the company's per share valuation.
MR. GOTTO: Object to form.
THE WITNESS: No, I disagree.
BY MR. SCHEIER:
Q. Okay.
A. It has to affect the company value; otherwise, the value per share will be increasing because the value of the company has to go down as the number of shares goes down because you're redeeming stock and there are fewer shares outstanding.
So the total company value has to decrease. And I think Exhibit 6A I think really shows that.
Q. Well, I want to move away from Exhibit 6A for a second. I think maybe I should ask you the question about the number of shares here.

A. Sure.
Q. The way I look at this sheet, if you're going to deduct out the entire amount of the repurchase obligation, you're deducting out from the company's enterprise value the full amount of its repurchase obligation over a 10-year period, present valued, to $80 million.
A. That's correct.
Q. But you're not making a corresponding adjustment to the number of shares down here. And to my mind, I want to see if you agree, it's an error because, on the one hand, you have the company paying cash, deducting cash from its value, but you're not taking into account that it's buying back and redeeming its shares which the Antioch Company always had historically and always intended to do.
So would you agree then that the defect in your methodology on Exhibit 21, or a defect, is that you have not reduced the number of shares in the line item that's identified as number of fully diluted common shares outstanding?
MR. GOTTO: Object to form.
THE WITNESS: No, I understand your question. I just disagree. Because on

December 15, 2003, those are the number of shares outstanding. No one disagrees with that.
BY MR. SCHEIER:
Q. But don't you have to do some sort of a projection out so that the company is getting, the company's being burdened with an expense but you're not accounting for the benefit, which is it's buying back shares.
So it seems to me that don't you have to do a corresponding analysis to determine how many shares over that 10-year period are being redeemed and then whatever calculation you need to do in terms of a present value or some sort of other factor that you would apply because these events are occurring in the future, it would have to adjust that number down in the number of fully outstanding shares because the way you have it laid out it's showing no benefit to the company of the $80 million expense.
MR. GOTTO: Object to form.
THE WITNESS: Sure. I understand what you're saying. I mean that's a great question. And the answer is not only have I never done it that way, I've just never seen

it done.
The shares are the number of shares -- the value of the company is the present value of future income. The future income or future cash flow in my Exhibit 6 is $80 million less in Scenario B than Scenario A.
So everything else being equal, ignore what they are but there's a Scenario A that has a present value of 200, Scenario B present value of 140, that company is worth less.
On this day the number of shares is 222,000. It's not the present value of future shares, it's the number of shares.
Now what happens, I think this is what you're asking me, this is the reconciling factor and you might say I didn't take that into account, but I don't know how to, I've never seen it done, going forward when we look at the value per share in 2006, '7, '8, '9 and '10, that value is going to go up because in reality in 2006, '7, '8, '9, and '10 there will be fewer shares outstanding.

So even though the company value is 140 instead of 200, at future dates the stock prices increase, which is exactly what happened. That's why if you look at the Prairie Capital stock values, the value of the company keeps going down while the value per share keeps going up because there are fewer shares outstanding. But that doesn't happen in real life, in Prairie Capital, or in this analysis until 2006, '7, '8, and '9.

As of 2003 there were 222,000 shares outstanding. There's nothing I can do about that.

BY MR. SCHEIER:

Q. And, sir, as of 2003 the company has $80 million in its treasury and hasn't yet spent it.

A. But they have a liability.

MR. GOTTO: Object to form.

BY MR. SCHEIER:

Q. Yeah, that liability -- and isn't it true that that liability has a corresponding buy, has a corresponding benefit to the company, that this table doesn't take into account?

A. It doesn't -- I'm sorry. I didn't

mean to cut you off.

Q. It has a corresponding benefit in that the number of shares are going to be reduced. In other words, the company is getting something for that $80 million over that 10-year period, and you're not reflecting it in your Exhibit 21.

A. Well, because that benefit is not a cash benefit. And it's not a benefit to the company. It's a benefit to the remaining shareholders.

Q. But it's a benefit that affects value, that impacts the per share valuation.

MR. GOTTO: Object to form.

THE WITNESS: Going forward.

I mean I understand this is a great conceptual issue. We should debate it at the next NCEO conference, but I don't know how -- this really is the way to deal with it.

BY MR. SCHEIER:

Q. Okay. Let's move back to the deduction you make of enterprise value of $80 million.

Would you agree that if you assume the company was purchasing shares for fair market

value, that line item, all other things being equal, would not be an appropriate adjustment to enterprise value?

A. Oh, no. It's still an appropriate adjustment to enterprise value because the value of the company is lower. The value of the shares go up over time as there are fewer shares outstanding.

Q. Right, because there are few shares outstanding. But that's not what's happening in your model here. You're not reducing the number of shares. That's exactly I think the conceptual issue that we're talking about. And you might be right but I'm not understanding and my job is to try to understand.

A. No, I understand.

Q. And you're not reducing the shares.

A. I'm not.

Q. And I find that -- and I'm questioning whether that, now having pointed that out and having gone through this discussion, you recognize is a methodological problem with this particular table and the valuation that you're presenting here.

MR. GOTTO: Object to form.

THE WITNESS: I don't think it's a methodological problem. I would say that's how the methodology works. You may not like it, I may not like it, but that's how the methodology works. And I just can't imagine a change.

Again, you go back to my scenario that we can agree to disagree why it happens. But if we have two companies in my Exhibit 6, one has a present value of cash flow of 200, one has a present value of cash flow of 140. B is worth $60 million less than A. It's just going to pay out $60 million more in cash than A does. And the reason for that is what actually happens with the stock redemption.

BY MR. SCHEIER:

Q. Yeah.

A. Keep in mind, what actually happens with a stock redemption is this transaction: You're an employee, I'm the company, you give me 10 shares of stock that we agree is worth $10 per share. Here's the transaction: Debit capital stock $100, credit cash $100. That affects cash flow. The credit cash $100. Debit capital stock

doesn't affect cash flow. There is no cash flow benefit to the company of buying back stock. There is a credit to the company. Cash is out the door. The value of that company just went down by $100.
Why does the value per share stay the same, because there are 10 fewer shares. But the value of the company just went down by $100. There's no offsetting increase to the value of the company for that debit to capital stock.
Q. Yeah, but now you're back to the value of the company and you're calculating damages on a per share basis.
A. So normally we stop there, we value the company and we're done. Now you're right, we have to calculate damages on a per share basis.
Q. Let's try this again.
You disagree that under your assumption that the Antioch Company's redeeming shares in excess of fair market value over the 10-year period, that the correct deduction from a valuation perspective from enterprise value in the model you present on Exhibit 21 is the present value of only that portion of the redemption price over fair market value.

A. That's right.
Q. You disagree with that.
A. I disagree with that.
Q. Okay.
A. Because that doesn't affect the value of the company. The total cash out the door affects the value of the company.
Q. But this -- okay. I don't want to argue. This exhibit is not looking at the value of the company. It's analyzing per share value.
A. Well, not yet. Before you get to the divide by 222,000, it's analyzing the value of the company.
The value of the company -- I'm saying the correct value of the equity is instead of $236 million, it's $156 million.
My analysis is based on decrease to the value of the company. Honestly, I think we would agree on that. The only thing we're really disagreeing on is I'm saying I'm compelled because I don't know what to do otherwise by saying on this date, December 15, how many shares are outstanding, 222,000.
You're suggesting, which is really conceptually interesting, I mean conceptually I

like what you're suggesting, I just don't know how to justify it from a professional standpoint. You're saying well, but the present value of the remaining outstanding shares is 100,000, it's not 222,000 if you present value what the shares are going to be going forward.
I've never seen any -- really, I've been doing this for 40 years, I've never seen any analysis that divides today's company value by the present value of the future shares outstanding. That's a meaningless calculation.
Q. I think it's very meaningful when you're analyzing for litigation purposes damages on a per share basis.
MR. SCHEIER: But with that remark, let's take a short break.
THE WITNESS: Okay.
MR. GOTTO: Perfect.
THE VIDEOGRAPHER: Off the record at 3:10 p.m.
(A recess was taken.)
THE VIDEOGRAPHER: Back on the record at 3:26 p.m.
BY MR. SCHEIER:
Q. Robert, I'd like you for the next

question to assume that I'm able to prove at trial the transaction price of $850 per share was fair.
With that assumption in mind, in preparing Exhibit 21 would you still deduct the $80 million of repurchase obligation that you baked in from Weinstock's report?
MR. GOTTO: Object to form.
THE WITNESS: I believe so. I'm trying to think of some reason why I wouldn't and I can't think of a reason why I would not. So I think the answer is that I would.
BY MR. SCHEIER:
Q. With that answer in mind and keeping in mind the assumption that I'm able to prove at trial that 850 was a fair price in the transaction, what adjustment, if any, would you make to any of the inputs on Exhibit 21 to end up with a corrected Antioch common stock fair market value per share post transaction of 850?
MR. GOTTO: Object to form.
THE WITNESS: Well, I haven't thought about this. I mean this is the first time I'm thinking about this. I don't know what I would do differently.

Exhibit 21 starts with the Duff & Phelps enterprise value conclusion of 395 which leaves them to 850. So it does start with $850 per share.

So at this point I don't know what I would do differently. But I haven't thought it all the way through. This is the first time I thought about that scenario, but I don't know that I would change anything on Exhibit 21. It would presumably affect my earlier exhibits, but I don't know that it would affect Exhibit 21.

BY MR. SCHEIER:

Q. Earlier you and I agreed, all things being equal, that if the company is redeeming shares as it did under my hypothetical for fair market value of 850, it would have no per share valuation impact.

So if that is still the case in your mind and you and I remain in agreement on that, what, if anything, would change other than deleting the line item for the repurchase obligation on Exhibit 21 to comport with the concept that redemption and fair market value does not impact the per share value of the sponsor company?

MR. GOTTO: Object to form.

THE WITNESS: Well, I think this actually -- this exhibit is not inconsistent with that conclusion. In other words, I don't see that this exhibit is at all inconsistent with the conclusion that if a company redeems stock at fair market value, the value per share stays the same.

BY MR. SCHEIER:

Q. Well, isn't it inconsistent with my hypothetical?

MR. GOTTO: Let him finish his answer, please.

MR. SCHEIER: Oh, I thought you were.

THE WITNESS: I thought I was finished as well.

MR. GOTTO: Sorry.

MR. SCHEIER: That's okay.

THE WITNESS: I don't see that it is consistent. In fact, I think it has to be.

In other words, over time as the number of shares decrease, the value of the company has to decrease; otherwise, the share price would increase, not stay the same.

BY MR. SCHEIER:

Q. I think you keep jumping back to the value of the company.

My question I think is a relatively simple one. Assuming my hypothetical that I'm proving at trial 850 was a fair price, isn't it true that the price reflected on Exhibit 21 on a per share basis immediately post transaction should also be 850?

MR. GOTTO: Object to form.

THE WITNESS: Oh, it never would be 850.

BY MR. SCHEIER:

Q. What if you eliminated your line item present value repurchase obligation liability, that would get you pretty close to 850; wouldn't it?

MR. GOTTO: Object to form.

THE WITNESS: It wouldn't get you anywhere close to 850. I mean you're missing the big issue here. That's not the big issue.

BY MR. SCHEIER:

Q. That's not the first time I've been told that, Robert.

A. Well, the big issue, keep in mind, the moment before the transaction, look at the number above that, the moment before the transaction the company has $20 million of debt outstanding. At the moment after the transaction it has $175 million of debt outstanding. That's the impact.

Q. On a per share basis you're telling me that has a valuation impact on a per share impact?

A. Counselor, you don't think that adding $150 million of debt has a per share impact? You really may want to take another break.

Q. Well, you can imply to the court that I'm some sort of a dumbbell, and that's okay if that's the way you want to play it. But no, I don't understand it that way.

I'm asking you whether now you're telling me immediately post transaction because of the transaction debt the per share value decreases.

A. Yeah, because you have debt in the company.

Q. Okay.

A. That's what happens with a leveraged ESOP. That is the definition of a leveraged ESOP.

Q. This wasn't a leveraged ESOP. You understand that.

A. It's a leveraged transaction.

Q. But it wasn't a leveraged ESOP; correct?

A. All right. But --

MR. GOTTO: Object to the form.

BY MR. SCHEIER:

Q. Sir, would you agree with me this was not a --

A. You can call it whatever you want. Adding $150 million --

Q. Stop arguing --

THE REPORTER: Hold on.

MR. SCHEIER: Stop arguing with me, stop arguing with me.

MR. GOTTO: Let him finish his question.

MR. SCHEIER: Stop arguing with me.

BY MR. SCHEIER:

Q. You called this a leveraged ESOP. And now you --

A. I never called this a leveraged ESOP.

I said in a leveraged ESOP.

Q. Which this is not; correct? So your testimony is irrelevant to me. This was not a leveraged ESOP; correct?

A. If my testimony is irrelevant, then it's time to go home; right?

Q. Well, other things have been relevant.

I don't want to talk about leveraged ESOP when the case we're litigating has nothing to do with leveraged ESOP and there's no leveraged ESOP in the case. That's what I'm explaining to you.

A. I can agree with that.

Q. Okay.

A. This case adds $150 million of leverage. That decreases the value of the stock of the company, period, full stop.

Q. And so when I look at Duff's spreadsheet which starts with the $395 million enterprise value, as you have, and also the Duff's interest bearing debt of $173 million, my recollection, it might be faulty, my recollection, sir, is that they end up at a per share value significantly in excess of $800. And the only difference between your Exhibit 21 and Duff's

analysis is you deducted out $80 million that is not a deduction off of Duff's analysis.

So your implication that I'm some sort of a dumbbell that doesn't understand the obvious, when I look at Duff's analysis it indicates I ain't so dumb.

A. Well --

MR. GOTTO: There's no question pending.

THE WITNESS: If you thought that I meant that you're dumb, I apologize. I did not mean to imply that at all. But you can divide --

MR. GOTTO: There's no question pending.

BY MR. SCHEIER:

Q. Could the reason that the transaction debt in this case doesn't have the impact you implied on per share value because the debt was taken on to redeem shares in the transaction?

MR. GOTTO: Object to form.

BY MR. SCHEIER:

Q. So the number of shares was reduced by the amount of debt?

A. The number of shares was reduced. So

the value per share is going to increase, that is correct.

Q. Is it your recollection when you prepared Exhibit 21 that the only adjustment you made to the Duff & Phelps post transaction valuation is the addition of an $80 million deduction from enterprise value based on Mr. Weinstock's repurchase obligation study?

A. I don't recall either way. It may be. I just don't recall.

Q. You have no recollection of making any other adjustments?

A. I don't, no.

Q. I guess to close the line of questioning, Robert, on the assumption that 850 was a fair price in the transaction, how do you get to a value of 468 --

MR. GOTTO: Object to form.

BY MR. SCHEIER:

Q. -- post transaction.

A. Well, I would use Exhibit 21. I wouldn't do anything differently.

Q. Okay. I guess then the conclusion I'm hearing you reach is that the transaction itself, even at fair market value, assuming again that I'm

proving 850 was within the range of fair market value, impacted the per share value of the stock to the extent reflected in Exhibit 21.

In other words, pre-transaction fair market value was 850, immediately post transaction it's 468. Is that your testimony?

A. That's not my testimony because that's not my conclusion.

Q. Well, your conclusion is it's 468 post transaction. You have to work with me because I'm able to ask you a hypothetical. You're an expert.

The hypothetical is that I prove my case that 850 was within the range of fair market value and Duff's pre-transaction valuation was reasonable and within fair market value.

With that hypothetical in mind, is it your testimony that immediately post transaction the per share value of Antioch's stock drops from 850 to 468?

MR. GOTTO: Object to form.

THE WITNESS: Well, all I can say is I don't know what I would do differently. That's not my analysis.

My analysis is that the value is $500 per share and drops to 468. So in my

analysis, this is not an important issue. Of my $100 million damages number, this is a $5 million number. This is a rounding error.

I haven't analyzed your situation, but I don't know as I'm sitting here without analyzing it I don't know what I would do differently or why I would do anything differently. But I can't tell you what the final answer would be because I'm not subtracting 468 from 850. I'm subtracting 458 from 500 and I'm concluding $32 per share damages because I believe, and I believed at 8:00 o'clock this morning and I believe at 3:00 o'clock this afternoon, that the value per share is $500, not 850.

BY MR. SCHEIER:

Q. I get that, I do get that. But you told me that nothing about Exhibit 21 would change if in fact Duff's equity value, you wouldn't make any adjustments to the numbers below the equity value line if Duff correctly determined the post transaction equity value to be 395,054,000. Did I understand your testimony correctly?

A. Well, I think what I said is I can't

think of any change that I would make. I couldn't think of any change an hour ago, 30 minutes ago, or right now. Maybe if you ask me, you know, three weeks from now, I'll keep thinking about this. It's a really interesting question.

Q. That's the second one I've asked you.

A. But that's not my analysis. My analysis is 500 minus 468, and I don't know, as I'm looking at Exhibit 1, I don't know what I would do differently. Because your question implies if 850 is the right number, shouldn't you simply ignore the repurchase liability. I mean effectively that's the logical conclusion of your question.

Q. Ignore it in a post transaction valuation analysis, yes.

A. Well, but all of the literature says you're wrong --

Q. Per share. Per share; right? We're talking about per share?

A. Well, but there is no such thing as a per share in a vacuum. Per share is always the equity value divided by the number of shares.

You can't get to a per share value without having an equity value. And in valuing

the equity of an ESOP-owned company before or after, all of the literature says the analyst has to consider the repurchase obligation.

Your question suggests I should ignore the repurchase obligation, and that's just inconsistent with valuation methodology.

Q. Well, my analysis suggests that you ignore it for purposes of valuing on a per share basis. And, in fact, that's I thought exactly what you attempt to illustrate in the table that you've provided us in your rebuttal report.

Do you recall the table that you pulled together in Exhibit 824?

A. Well, honestly, I don't recall it, but I'd be happy to look at it.

MR. GOTTO: What page?

MR. SCHEIER: I'm sorry. Page 14, Paragraph 55.

BY MR. SCHEIER:

Q. What you're showing there is the impact of purchasing a share in excess of fair market value; correct? And it has an impact on a per share basis; correct?

A. That's correct.

Q. And what you're doing here is

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responding to Mr. Risius's table that showed when a share is redeemed at fair market value, it has no impact on a per share valuation.

A. That's correct.

Q. Okay. And you, as we sit here today, regardless of our discussion we just had, believe that the way those two scenarios I just described play out is accurate.

In other words, when shares are redeemed at fair market value, it has no per share valuation impact. When shares are redeemed in excess of fair market value, it has some impact on per share values.

A. I certainly agree with that. But to get to the per share value, in my table on Paragraph 55 and at any time you need to start with, as I say here, the aggregate equity value. The aggregate equity value has to reconsider the repurchase obligation.

Q. You keep talking to me about the aggregate equity value. And we can just stop shortly, but what Mr. Risius was showing that although the equity value of the company is reduced by a fair market value redemption, so is the number of shares. And so the per share value

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remains the same.

Your table was intended to show, as I understand it, correct, that when you make your redemption for an amount in excess of fair market value, not only is the company's equity value reduced but also the share value of that company is reduced.

A. That's the purpose of the table. Regardless of what the purpose of the table is, to get to the correct fair market value of the stock, you need to have the correct fair market value of the equity. To get to the correct fair market value of the equity, you need to consider the repurchase obligation correctly, and Duff & Phelps didn't do that.

Q. That's much different than what you and I were talking about just now on the two tables.

A. I don't think it is. So we can agree to disagree.

Q. Well, we don't have to agree to disagree. I need to understand why you were responding to Mr. Risius's table the way you did.

Mr. Risius's table showed a stock redemption at fair market value. It further

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showed a reduction in that company's equity value but a corresponding reduction in that company's number of shares. The result was that on a per share value, although the company's enterprise value went down, its share value was not impacted and remained the same.

Do you recall seeing that table?

A. Sure.

Q. And I believe in your rebuttal report you had no issue with the table. You took issue with what you believed to be Mr. Risius's misunderstanding of your assumption which was that the company was going to be redeeming shares in excess of fair market value.

A. That's correct.

Q. And so you went ahead then and prepared a table showing that in the latter situation, the company pays out in excess of fair market value corresponding reduction in enterprise value, corresponding reduction in shares, but because it was in excess of fair market value, unlike in Mr. Risius's fair market value table, in your above fair market table not only did the enterprise value go down, the per share value went down; correct?

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A. I agree with all that.

Q. Okay. Thank you.

And I guess theoretically that same concept would apply, those two tables would apply, where in Table 1, Risius's table, Antioch redeemed shares at fair market value. In other words, it would pay fair market value for shares, thereby reducing its enterprise value, but its shares would be redeemed and taken out of circulation. The result would be a company with a lower enterprise value but a per share value that was not impacted by that redemption transaction; correct?

A. That sounds correct.

Q. And in another scenario, the one you believe, Antioch redeemed shares for an amount in excess of fair market value, its enterprise value goes down. But not only does that happen, there's a corresponding reduction in the share value as illustrated in the table that's appended to Paragraph 55 of your rebuttal report; correct?

A. That's correct.

Q. Robert, I wanted to ask you a couple of brief questions about your Exhibit 22. You there?

A. Yes, I am.
Q. Thank you. Does the analysis on your Exhibit 22 feed into any of your damage calculations relative to either flaw 1 or flaw 2?
A. No.
Q. Do you have an understanding of how, if at all, the plaintiffs intend to use the analysis that you prepared at their direction on Exhibit 22?
A. No.
MR. SCHEIER: Robert, I am going to I believe move on to some questions regarding your third flaw. I'm sorry to do this, but I'd like to take a short break before I do that.
MR. GOTTO: Sure.
MR. SCHEIER: Thank you.
THE VIDEOGRAPHER: Off the record at 3:49 p.m.
(A recess was taken.)
THE VIDEOGRAPHER: This begins Disk Number 6. Back on the record at 3:59 p.m.
BY MR. SCHEIER:
Q. Robert, I wanted to talk a little bit about the third flaw that you discuss in Exhibit

822 and again in Exhibit 824.
In Exhibit 822 which is the report that you delivered to the defendants, you did not attribute any damages to the 409P issue that is the subject of your third flaw analysis; correct?
A. That is correct.
Q. You did, however, at the request of counsel calculate damages attributable to, for lack of a better term, the 409P issue in the report that you tendered on July 15, 2015; correct?
A. That is correct.
Q. If I understand the analysis you ultimately landed on in regard to 409P related damages to the third flaw, you chose to use a company specific risk premium of 1 percent applied to the Duff based DCF in Exhibit 14 to your April report; correct?
A. That's correct.
Q. As I understand it, that is the only adjustment you made to the Duff DCF on Exhibit 14 to account for damages related to the 409P issue; correct?
A. That's correct.
Q. Is it your view that the 409P risk was

known and knowable as of December 15, 2003?
A. I would say yes.
Q. Then why didn't you apply a company specific risk premium or some other means to calculate the damages attributable to this 409P issue in reference, or with FTI 1's, the FTI 1 DCF which you've written several times was chosen by you because it accounted for all known and knowable risks?
A. Sure. The only opinion I have with regard to this issue is that it was a risk to the company that could have been and should have been considered somehow by Duff & Phelps.
In my rebuttal report I'm recommending an illustrative methodology for one potential way to quantify it only in response to Mr. Risius who says there's no way to quantify this so it's not relevant. I wanted to illustrate it's potentially quantifiable. So whether it's quantifiable or not, I think it's still relevant.
So my intention in my original report and my intention today is not to quantify this risk, not to assign a dollar value to the third flaw, just to indicate that there was another serious risk that was facing this company

Antioch in December of 2003 that Duff & Phelps either didn't know about, wasn't informed about, or ignored, and, therefore, the Duff & Phelps analysis is just unreliable.
As I say, I wasn't trying in my first report or my second report to measure the damages and my opinion of damages does not include flaw 3.
My opinion is that this was an issue that a financial advisor like Duff & Phelps should have been aware of, should have considered somehow, and they didn't do it. Therefore, their fairness opinion is just not reliable.
Q. Couple follow-ups. Do I understand you saying that as we sit here today you are not giving the opinion and will not be giving an opinion at trial that the failure of Duff & Phelps to take into account the 409P risk damaged the company in a way that you're going to quantify?
A. That is correct.
Q. I see. Is it my understanding also that you what I believe -- well, strike that.
Did I understand you to say that you understood Mr. Risius in his report wrote that it was not possible to calculate damages

attributable to 409P?

A. I think he said that. I may not be correct. That's my recollection as I'm sitting here.

Q. For the record, I don't believe he said that. He simply noted that you didn't attribute damages to it. He was unclear then why you had written about it. But that's okay.

A. Sure.

Q. It might have been a misunderstanding.

A. That's right.

And, again, I can explain why I did it. But my intention was never to quantify that damage. It was simply to say that this is an issue that a financial advisor should have considered, particularly at this time period, 2003, and it just wasn't considered, that I saw, by Duff.

Q. So I just want to be very clear in light of what you just said. You're not going to be giving an opinion at trial that the ESOP or the company suffered damages in the amount of $20.5 million, the number set out in Paragraph 78 of Exhibit 824 as a result of Duff's failure to properly account for the 409P related risks

discussed in your first report?

A. That's exactly right. I just considered the $20 million number an illustrative number to show that there is some way that Duff could have quantified this issue.

Alternatively -- but that's not my opinion of damages. That's just to show that one way you could possibly look at the damages would be to increase the discount rate for this risk.

Alternatively, the other possibility, which I think is the more serious possibility, and I'm not saying Duff should have reached this conclusion but potentially should have considered it, is to raise their hand and say until this issue is resolved to our satisfaction I can't give you, GreatBanc I can't give you a fairness opinion, this is a serious unresolved issue. Geez, Louise, the company could lose its S election status. Before I give you any fairness opinion, we got to really understand this better. I think that would have been a responsible thing for a financial advisor to do.

Q. Did you see in any of Duff's workpapers recognition that a year and a half after the transaction the company would be

obligated to comply with the restrictions in Rule 409P?

A. I don't recall. I just don't recall either way.

Q. And you've not seen any evidence that the company in fact ever violated Internal Revenue provision 409P?

A. I would say technically not.

I have seen subsequent meaning 2005, '6, and '7 board minutes and so forth and other memoranda where the company had to either buy back shares or buy back warrants to avoid violating 409P.

So it became an issue that the company had to address by actually borrowing money specifically to buy back shares and warrants from the Morgan family to keep the Morgan family under the 50 percent threshold.

Q. Sure.

A. So could the company avoid the issue? Yeah, but they'd have to actually do something. And in fact they did. They did actually spend real money to avoid a 409P violation.

Q. But, again, you're not attributing any damages to the company or that the plaintiffs can

prove at trial, certainly you're not going to support it, that in regard to any sort of additional borrowings or any other actions of the board of directors of the company post transaction?

A. That is correct. That is not my opinion.

Q. I understand.

MR. SCHEIER: You know, Gary, I hope you and Robert don't get angry with me, but we'll need to take another break because I could be close to being done.

MR. GOTTO: All right.

MR. SCHEIER: I just want to now review my notes and be sure. I'll come back in and let you know. But thank you for being patient with me.

MR. GOTTO: Great.

THE VIDEOGRAPHER: Off the record at 4:10 p.m.

(A recess was taken.)

THE VIDEOGRAPHER: Back on the record at 4:21 p.m.

BY MR. SCHEIER:

Q. Robert, thanks for your patience with

me. I do have only a few more questions, but we should be out of here in short order.

On one of the -- I just wanted to follow up on a couple of questions, a couple of questions and answers you and I went through on your flaw 1.

You had mentioned aside from just exercising your judgment and choosing a company specific risk premium of 5 percent, that you had looked at I think it's called a quantum of risk factors.

A. Yes.

Q. I'm not sure why I did it but I was not familiar with that term, and so I Googled it a little earlier, and the only hits I was coming up with were hits related to physics science.

A. Sure.

Q. Is this quantum of risk concept a part of the customary nomenclature or vernacular of valuation experts?

A. Well, I think so. Although valuation analysts could use synonyms.

All it means when I say a quantum, quantum of course just means a measure. The word "quantum" is Latin for measure. So sometimes it's

called a quantum layer of risk or a layer of risk or a level of risk.

So all I'm trying to say, and I think different books would use different words, but they all mean there are different categories of risks, some of which we can measure. You can measure the risk-free rate, you can measure the general equity risk premium, you can measure the size risk premium. Those are levels or layers of risk that you can measure. Then when you get to the final layer, the company specific risk, or the investment specific risk, or the unsystematic or nonsystematic risk, then that's just another layer of risk or level of risk or quanta of risk, and that's all it means.

Q. If I look through treatises on the proper way to value stock in a private company, would I find, to the best of your knowledge, use of the phrase "quantum of risk" or would I most likely find one of the synonyms that you just referenced?

A. Well, you'll probably -- if you find it in the literature, I would say this, and this will sound arrogant, but if you Google this you'll find it. I don't know anyone who's written more

journal articles on quantifying company specific risk than me. I mean I think that's truly a fact.

So you'll probably find the word "quantum" or "quanta" or "quantum level of risk" in my articles. But if you look in the books related not just to business valuation but coming up with discount rates because that's really the issue here, coming up with discount rates.

So look in like the Pratt and Grabowski textbook on cost of capital, if you look in cost of capital texts, the Damodaran textbooks on cost of capital. You may find words like "level of risk" or "layer of risk" or "category of risk." And that's all I mean.

Q. Okay. Your "quantum of risk" is simply a synonym for those phrases you just now mentioned.

A. Yes.

Q. Understood.

Okay. Just another follow-up. In forming a capital asset pricing model to determine the cost of equity, are there any differences between that analysis under fair value standard versus a fair market value standard in terms of inputs or assumptions?

A. For CAPM alone I think the answer still would be yes. For most of the differences in the WAC would be in the debt equity mix and the cost of debt because in fair value again we're assuming company specific fair market value, we're thinking willing buyer willing seller. Willing buyer willing seller could have a different debt equity mix and could have a different cost of debt because they're going to releverage.

But even under fair value, under fair market value, we would look at the, even something like the risk-free rate is going to be the same presumably, general equity risk premium probably is the same, beta probably the same, size could be different because it's the difference between willing buyer and willing seller and knowing the buyer and seller. The company specific risk could be different. The types of company specific risk I'm looking at here I believe are still nondiversifiable.

In other words, whoever buys the Antioch Company a hundred percent, whether it's the ESOP, whether the company goes public in an IPO, whether it's a competitive acquirer, whether it's an Avon or whoever, the risks that I'm

talking about, whether we agree with them or not, are risks that this company has to face and they just have to deal with them. In other types of CAPMs -- so that would go into a marketplace, willing buyer willing seller.

In a fair value, which is really what's it worth to me effectively, there are other company specific risks that we potentially could consider, I don't think they apply here, but key person risk, you know, key executive, key manager risk, would be something that could be diversified away by a willing buyer and a willing seller.

I can't diversify it away. I have a key sales executive, a key CEO, a key whatever, key customer list, key customer risk, key salesman risk, key supplier risk, something that is truly unique that the next owner could fix. I can ignore it in a fair market value valuation but I consider it in a fair value valuation because I know who the seller is. It's me. I have one supplier, one customer, one key executive who brings in 99 percent of my business. I have a unique location that is sitting on top of a Uranium mine, or something, that would be unique to me and I would have to consider those factors

in my company specific risk.

So the discount rate could be different between different standards of value.

Q. Okay. Why is some of those risks not considered or don't you consider in a fair market value valuation?

A. Sure. Because fair market value, again, is the typical buyer and the typical seller. So the typical buyer, instead of thinking about basically identifying buyers and sellers, the typical buyer would come in and say, and I'm just going to pick a name, I'm Berkshire Hathaway, I'm Warren Buffet, I got executives to spare, you have key supplier dependents, or, you know, key executive dependents, I've got a hundred guys I can assign to you, I make that problem go away. You have key supplier dependents, I've got a hundred suppliers, they now work for you.

Q. Okay. So those are risks then that --

A. Can go away depending on who the buyer is.

Q. Okay. All right. And that's in --

A. That's in fair market value because we're assuming any seller and any buyer -- if any seller and any buyer can make these risks go away,

even if I haven't, I'm the current owner, I'm going to ignore them in a fair market value valuation, as everyone has done here, including me.

Q. And now explain those risks in a fair value valuation.

A. Sure. In a fair value valuation, again it's an exit price, the exit price is how much am I, I'm the current owner, how much am I willing to sell to you.

If you're the buyer, if you're Berkshire Hathaway, now you could make those risks go away, but you're going to come to me and say I'm going to assume those risks are in place, I'm not going to pay you a higher value assuming all of those risks just went away because to you you've got those risks.

The company may only be worth $100 million to you. It may be worth $150 million to me. That's closer to fair market value. If it's only worth $100 million to you, I'm only going to pay you $100 million because you have one customer, one supplier, one executive, a unique source of supply that's under your property, whatever the problem is.

Q. Were you just describing the only difference in the inputs and the assumptions that -- those are the differences in inputs and assumptions that you would make in a fair value versus a fair market value?

A. Only with regard to CAPM.

Q. Right, yes. That was just in regard to CAPM.

A. Yes.

Q. Okay. Robert, other than the opinions you've written in your two reports that are Exhibits 822 and 824 and any other opinions that we discussed in the room today, do you hold any other affirmative or rebuttal opinions that you plan to testify to at trial that are either not in the reports or that we didn't discuss today?

A. No. I don't believe so.

MR. SCHEIER: I think we're done. Thank you very much for your time.

MR. GOTTO: We'll read and sign.

THE VIDEOGRAPHER: Off the record at 4:32 p.m.

(Said deposition was so concluded at 4:32 p.m.)

DECLARATION UNDER PENALTY OF PERJURY

Case Name: Fish, et al. vs. GreatBanc Trust Company
Date of Deposition: 08/26/2015
Job No.: 10018085

I, ROBERT REILLY, hereby certify under penalty of perjury under the laws of the State of _______________ that the foregoing is true and correct.

Executed this ______ day of __________________, 2015, at ____________________.

____
ROBERT REILLY

NOTARIZATION (If Required)
State of _______________
County of _______________
Subscribed and sworn to (or affirmed) before me on this _____ day of ____________, 20__,
by______________________, proved to me on the basis of satisfactory evidence to be the person who appeared before me.
Signature: ______________________________ (Seal)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, Donna M. Kazaitis, CRR, CLR, RPR, CSR No. 084-003145, do hereby certify:

That the foregoing deposition of ROBERT F. REILLY was taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me, were thereafter transcribed under my direction and supervision and that the foregoing is a true record of same.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name this 10th day of September, 2015.

Donna M Kazaitis
DONNA M. KAZAITIS, CSR, RPR, CLR, CRR
Certified Shorthand Reporter
State of Illinois
Registered Professional Reporter
Certified Livenote Reporter
Certified Realtime Reporter
CSR License No. 084-003145

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Name of Witness: Robert Reilly
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Job No.: 10018085
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ROBERT REILLY

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